

THE PATHOLOGIES OF INDIVIDUAL FREEDOM

HEGEL'S SOCIAL THEORY

by
Axel Honneth

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INDIVIDUAL FREEDOM

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Axel Honneth

Translated from the German
by Ladislaus Löb

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Acknowledgments

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I

Hegel's Philosophy of Right as a Theory of Justice

ALTHOUGH many contemporary philosophers have embraced Hegelian philosophy to a surprising degree—which may even help to bridge the gulf between the Analytic and Continental traditions—Hegel's *Elements of the Philosophy of Right* has so far failed to exert the slightest influence on the current debates in political philosophy. Rather, in recent years—after the abrupt end of the Marxist phase and its reduction of modern right to a mere superstructure—philosophers returned on a broad front to the rationalist paradigm of the Kantian tradition, which essentially dominates the debate from Rawls to Habermas; and however hard these two authors in particular try to embed their Kantian concepts of justice in a realistic, almost social-scientific approach, the theoretical model of Hegel's *Philosophy of Right* plays no decisive part in their thought. Nor has the situation changed much in response to the countermovement in political philosophy that came into being through the somewhat artificial grouping of theoreticians as diverse as Charles Taylor, Michael Walzer, or Alasdair MacIntyre under the heading of “communitarianism.” Despite a strong tendency to award a privileged position to ethics as opposed to a formalistic principle of morality, or to communal values as opposed to arbitrary individual freedom, no real attempt has been made in these circles to render Hegel's *Philosophy of Right* fruitful for the discourse of political philosophy. Indeed, the fact that authors

such as Michael Walzer, Alasdair MacIntyre, or Joseph Raz are trying to keep the greatest possible distance from the political philosophy of Hegel has acquired an almost symptomatic significance by now.¹

At first sight, this general isolation of Hegel's *Philosophy of Right* is difficult to understand since the work has a number of theoretical features that could make it appear particularly suitable for our debates today. Given the widespread awareness of the need for the social contextualisation of formally established principles of justice, Hegel's attempt at setting the abstract principles of modern right and morality within an institutional framework should look extremely attractive; further, in view of the increasing uncertainty about the place formal right should occupy in our practical everyday morals, his efforts to develop an ethical metatheory of right ought to appear uncommonly seductive; and finally, in view of the problems of political philosophy today, there could be a particular appeal in the close connection between the development of his theory of right and his diagnosis of the age, which centers on the alleged threat of individualism. But it appears that all these advantages have been unable so far to regain a legitimate place for Hegel's *Philosophy*

¹One exception, of course, is Charles Taylor, who not only wrote a major monograph on Hegel (*Hegel* [Frankfurt, 1978]) but who, in a summary of that book, also produced a concise interpretation of Hegel's political philosophy (*Hegel and Modern Society* [Cambridge, 1979]); however, even that impressive study can in no way be understood as a resumption of the specific intentions of the *Philosophy of Right*, but rather as an actualization of Hegel's philosophical thought as a whole. The *Philosophy of Right* converges with Walzer's theory of justice in the idea that the separation of certain normative spheres must constitute an essential principle of a modern concept of justice (Michael Walzer, *Sphären der Gerechtigkeit* [Frankfurt, 1983]; *Spheres of Justice* [New York, 1983]); it touches on the ethics of MacIntyre in the idea that a certain internal connection must be established between a diagnosis of the age and a normative theory (Alasdair MacIntyre, *Verlust der Tugend* [Frankfurt, 1987]; *After Virtue* [London, 1981]); and it agrees in certain points with the approach of Joseph Raz in claiming that the starting point of a liberal theory of justice must be a complex ethical concept of individual autonomy (Joseph Raz, *The Morality of Freedom* [Oxford, 1986]). Currently the only exception, i.e., a genuine reactualization of Hegel's *Philosophy of Right*, seems to be Michael O. Hardimon's study, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge, 1994).

of Right in today's philosophy. Rather, even in the debates with Rawls or Habermas, where a theoretical recourse to his work would seem most obvious, any attempt at a systematic reactualization is patently avoided.² Thus we are facing a paradoxical situation in which, on the one hand, the reviving interest in Hegel is beginning to produce a growing amount of academic research into his *Philosophy of Right* while, on the other hand, its systematic content still seems to have no significance for the politico-philosophical self-understanding of our time. Hegel's *Philosophy of Right*—which once divided the most talented minds of a whole generation and which made the distinction between Hegelians on the Right and Hegelians on the Left possible until the middle of the previous century—has obviously lost its polarizing force. In contrast to Kant's theory of right or John Stuart Mills's treatise on liberty, which have recently returned into the limelight, Hegel's book plays the unfortunate part of a classic that is widely read but no longer heard.

If we try to discover the reasons why Hegel's *Philosophy of Right* has so conspicuously lost its appeal to the present, we are immediately struck by two reservations about the treatise that have in the course of time become commonplace in the discourse of political philosophy; these two stereotypes, added together, explain to a certain extent why doubts about Hegel's political philosophy are so dominant today that they even eclipse its obvious attractions. The first prejudice, whether deliberately or involuntarily, amounts to saying that the *Philosophy of Right* has antidemocratic consequences because it subordinates the freedom of the individual to the ethical authority of the state. It is true that certain details or trains of thought in the book could support such an objection, but in each case the center is held by Hegel's unmistakable refusal to interpret, as Kant does, the autonomy of all the citizens as the principle of

²Exceptions to this rule are *Clio* 10, no. 4 (1981): 407–22; Andrew Buchwalter, "Hegel's Concept of Virtue," *Political Theory* 20 (1992): 548–83; Andrew Buchwalter, "Structure or Sentiment? Habermas, Hegel, and the Conditions of Solidarity," *Philosophy Today* 41 (suppl.): 49–53; Sibyl Schwarzenbach, "Züge der Hegelschen Rechtsphilosophie in der Theorie Rawls," *Hegel-Studien* 27 (1992): 77–110.

the sovereignty of the people; and as this undemocratic feature of the work is foregrounded, it becomes obvious that it cannot productively be understood as a kind of metatheory of the democratic constitutional state.³ The second reservation that bars the road to any attempt at actualizing the *Philosophy of Right* today is of a mainly methodological kind and refers to the structure of the argument in the text as a whole. It is said that the steps in Hegel's reasoning can be correctly followed and judged only in relation to the appropriate parts of his *Logic*, but the *Logic* has become totally incomprehensible to us owing to its ontological conception of spirit. Therefore, it seems advisable to treat the text as a quarry for brilliant individual ideas rather than making a futile attempt to reconstruct the theory as an integral whole.⁴

It was probably these two reservations, one political and the other methodological, that made the most significant contribution to the decline in importance of the *Philosophy of Right* in the last few decades. All the arguments, epistemological as well as normative, that Hegel is able to marshal in support of his own conception of "ethical life" remain hidden behind the contested elements of his methodology and his concept of the state. If this crude characterization bears any resemblance to the reception of the work over the years, then any attempt at reactualization is faced right at the outset with the choice between two alternatives: we must either criticize the two objections directly and show them up as mere misunderstandings through a new interpretation of the *Philosophy of Right*, or we must criticize them indirectly by demonstrating their irrelevance to any really productive reappropriation of the treatise. Thus, while the first, "direct" strategy would aim to actualize the *Philosophy of Right* according to its own methodological standards and at

³One of the most even-handed discussions of this problem is still that in Shlomo Avineri, *Hegel's Theorie des modernen Staates* (Frankfurt, 1976), published in English as *Hegel's Theory of the Modern State* (London, 1972).

⁴The dependence of the entire argument of the *Philosophy of Right* on the assumed concept of spirit is most convincingly and clearly demonstrated by Rolf-Peter Horstmann, "Hegel, Georg Wilhelm Friedrich," *Routledge Encyclopedia of Philosophy*, ed. Edward Craig, 2:259–80, esp. 273.

the same time to rehabilitate Hegel's concept of the state, the second, "indirect" strategy would pursue a much more modest aim: to demonstrate that a productive understanding of both the intention and the fundamental structure of the text is still possible, even if neither the substantialist concept of the state nor the operative instructions of the *Logic* are given an explanatory role. As can easily be seen, the two forms of reactualization carry opposite risks. While the first suggested method of interpretation runs the risk of salvaging the substance of the *Philosophy of Right* at the cost of falling short of our own post-metaphysical standards of rationality, the second is always at risk of sacrificing the true substance of the work to the objective of a bold cleanup of the text.

Despite the extreme brevity of these remarks it should by now be clear enough which of the two strategies I regard as the more promising, given the theoretical and normative conditions of the present. As I do not believe that either Hegel's concept of the state or his ontological concept of spirit can in any way be rehabilitated today, I must be satisfied with the indirect reactualization of the *Philosophy of Right*. Therefore, what I want to attempt here is to sketch, step by step, a proposal as to how the basic intention and the structure of the text as a whole can and must be understood without using either the methodological instructions of the *Logic* or the underlying conception of the state; the goal of this "indirect" procedure is to demonstrate the current relevance of *The Philosophy of Right* by proving that it can be understood as a draft of a normative theory of those spheres of reciprocal recognition that must be preserved intact because they constitute the moral identity of modern societies.

In proposing such an interpretation I am fully aware of the danger of losing sight of the true substance of the work as I try to reactualize it; nothing would be worse than presenting a substantial normative social theory under the title of *Philosophy of Right* and finally discovering that I could have done that more easily without the laborious discussion of Hegel's text. In order to avoid this embarrassing risk I will immediately describe the two theoretical elements that I believe must be considered in any appropriate and fair reconstruction of the work, even if

this entails considerable difficulties in interpretation: one being the far-reaching intuitions Hegel attached to his concept of “objective spirit,” the other the manifold reasons that led him to introduce his concept of “ethical life.” The first concept, neglecting its interconnection with the whole of the Hegelian system, seems to me to contain the thesis that all social reality has a rational structure and any breach of that structure by using false or inadequate concepts to try to understand it will necessarily have negative effects on social life as soon as those concepts come to be applied in practice. In short, by his idea of society as “objective spirit,” Hegel wishes to claim that an offence against those rational grounds with which our social practices are interlinked at any given moment will cause damage or injury in social reality. In contrast, the second central concept, that of “ethical life,” seems to me to contain the thesis that in social reality, at least in that of modernity, we come across some spheres of action in which inclinations and moral norms, interests, and values are already fused in the form of institutionalized interactions. To that extent Hegel is being consistent in asserting that those moral spheres of action themselves deserve the normative designation of “ethical life”; this is his philosophical alternative to the search for abstract moral principles as the conceptual means for orienting human subjects normatively. In what follows, these two theses, for all my vagueness in introducing them, will be regarded as belonging to the core of even an indirect reactualization of Hegel’s *Philosophy of Right*; I maintain that those who dispense with the rational reconstruction of the concepts of “objective spirit” and “morality” have sacrificed the substantial content of the text to a superficial plausibility.

In particular, in my attempt at reactualization, I will first reproduce the basic intention of Hegel’s *Philosophy of Right* in a form in which the text will appear as eminently meaningful even under the theoretical premises of the current debate in political philosophy; here I will be mainly concerned to provide a modern elucidation of the reflection behind Hegel’s obscure formulation that the “idea” of the “general free will” determines the total extent of what we should call “right”; I

try to interpret this assertion as the nucleus of a theory of justice, which aims at assuring the intersubjective conditions of individual self-realization to all (see chapter 1). Then, in a second step, I will demonstrate the immanent way in which Hegel links his draft of a theory of justice to a diagnosis of social pathologies; for I believe that the truly original nucleus of the *Philosophy of Right* is the suggestion that we regard the concepts “abstract right” and “morality” as two inadequate descriptions of individual freedom, which are reflected in the lifeworld as a “suffering from indeterminacy”; in this context I will also have to define the extent to which Hegel attributes to his draft of a theory of justice the therapeutic significance of a liberation from suffering (see chapter 2). In my third and last step I will examine Hegel’s concept of “ethical life” by demonstrating the complex conditions that, in his opinion, must be fulfilled in modernity by those social spheres that make the realization of individual freedom possible; here the limitations of Hegel’s approach should also become clear: in short, I believe that he has an overly institutionalist idea of the conditions of individual freedom (see chapter 3).

THE IDEA OF INDIVIDUAL FREEDOM: INTERSUBJECTIVE CONDITIONS OF AUTONOMY

After taking up his position at the University of Berlin, Hegel continued the series of lectures on the philosophy of right that he had begun to give at the University of Heidelberg. In 1820 they were finally published in book form entitled *Elements of the Philosophy of Right*. Although in the meantime Hegel had erected his architectonic system, he had by no means abandoned the essential intuitions of the practical philosophy of his youth.⁵ Under the heading of “objective spirit,” as he now

⁵On the genesis and context of Hegel’s *Philosophy of Right* see the excellent article by Ludwig Siep, “Vernunftrecht und Rechtsgeschichte. Kontext und Konzept der ‘Grundlinie im Blick auf die Vorrede,’” *Grundlinien der Philosophie des Rechts (Klassiker Auslegen*, vol. 9) (Berlin, 1997), 5–30.

called that part of his philosophy which dealt with the normative principles of a just social order in modern conditions, he intended to follow a line of reasoning that was very different from the deductions of rational right in Kant or Fichte. First, he argued, since subjects were connected from the start by intersubjective relations, a justification of general principles of justice could not arise from the atomistic idea that the freedom of the individual essentially consisted in the arbitrary exercise of a subject's own will, undisturbed and uninfluenced by others. This led, second, to his equally unchanged objective of devising general principles of justice that would legitimize those social conditions under which each subject is able to perceive the liberty of the other as the prerequisite of his own self-realization. Third, he had not discarded the quasi-Aristotelian idea of his youth that the normative principles of communicative freedom in modern society must not be anchored in rules of external behavior or mere coercive laws but needed to be internalized by practical training in habitualized patterns of action and custom if they were to lose the last remnants of heteronomy. And fourth, he remained equally, or even more firmly, convinced that in such a culture of communicative freedom, called "ethical life," a significant space must be provided for that social sphere of action in which all the subjects in their turn could pursue their selfish interests according to the conditions of the capitalist market.⁶ When Hegel was planning the publication of the *Philosophy of Right* in Berlin, he did not wish to part with any one of these four premises, all of which hailed back to the creative initial phase of his time in Jena, but his philosophical system had meanwhile developed in such an independent way that it was not easy to see how his original intuitions could be shown to their best advantage and without any damage in the new framework. The solution Hegel found for this task in his treatise not only clarifies the central intention of his practical philosophy; it explains both the extent of the underlying con-

⁶For these four premises of the practical philosophy of the young Hegel, cf. Axel Honneth, *Kampf um Anerkennung* (Frankfurt, 1994); *The Struggle for Recognition* (Cambridge, MA, 1996), chap. 1, sect. 2.

cept of right and the structure of the text as a whole, which seems confusing at first sight.

Since his farewell to Jena, the development of Hegel's system had been accompanied by the idea that the discipline devoted to morality and right must fall into that part of his philosophy that was to contain the explanation of the "objective spirit"; this meant, roughly, that portion of his philosophical undertaking that was to reconstruct the process of self-reflection undergone by reason during the stage in which it manifests itself in the external phenomena of social institutions and practices.⁷ The distance between this formulation and the tasks we usually associate with disciplines such as ethics or moral philosophy is significantly reduced if we take into account a further definition Hegel provides for the sphere of the "objective spirit"; but in so doing we must ignore the difficulty that arises from this additional characterization, which introduces into the system an element that has evolved historically and yet is intended to represent the self-reflection of reason. In fact, Hegel holds that reason realizes itself as a specific form of spirit in the objective world of social institutions; under modern conditions objective spirit takes the form of a "will that is generally free"; thus his philosophy of "objective spirit," in its most general definition, has to reconstruct systematically those steps that are necessary for the free will of every human being to realize itself in the present.⁸ Now it is no longer difficult to see that it is precisely this part of Hegel's system that contains the foundations of the philosophical discipline usually described as the "philosophy of right" or "ethics," and if we remove the theory from the system as a whole, we can even interpret it in such a way as to make it

⁷For a more precise definition of the place of the *Philosophy of Right* within Hegel's system, cf. Horstmann, "Hegel," 274.

⁸To elucidate the general intention of Hegel's *Philosophy of Right*, cf. Kenneth Westphal, "The Basic Context and Structure of Hegel's *Philosophy of Right*," in *The Cambridge Companion to Hegel*, ed. Frederick C. Beiser, (Cambridge, 1994), 234–69; Siep, "Vernunftrecht und Rechtsgeschichte"; Karl-Heinz Ilting, "Die Struktur der Hegelschen Rechtsphilosophie," in *Materialien zur Hegelschen Rechtsphilosophie*, ed. Manfred Riedel (Frankfurt, 1974), 2:52–78.

comparable not only to the philosophies of morality and right in Hegel's time but also to concepts of justice in our own.

Hegel, then, sees the idea of the "free general will" as the basic principle of his *Philosophy of Right*. Like Rousseau, Kant, and Fichte, he sets out from the premise that under the conditions of modern enlightenment any definition of morality or right can be considered as justified only to the extent that it expresses the individual autonomy or self-determination of the human being. However, the comparison becomes more difficult as soon as Hegel tries to integrate this discussion into his system by describing the perspective from which that "free will" is to be viewed in the *Philosophy of Right*. In the famous wording of § 29 of the Introduction we are told that the task of the treatise is to represent the "existence of the free will," which will at the same time define the sphere of "right" as a whole. In comparison with the approaches mentioned before, everything about this characterization is unclear. Our understanding of the concept of "existence" is assisted to some extent by the suggestion that in accordance with the definition of "objective spirit" we must be dealing with the social conditions for the realization of free will, but even the simple question of how far this can provide any kind of normative justification is left unanswered. Thus the only way to obtain any further clarification is through a closer examination of Hegel's use of the term *free will*; for right at the beginning he builds into this key category of his *Philosophy of Right* a set of intuitions he has preserved from his early phase, which distance him from Kant or Fichte.

In his elucidation of the term *free will*, which takes up the largest part of his Introduction to the *Philosophy of Right*, Hegel reflects on the modern idea of individual autonomy or self-determination.⁹ In his view, only two, equally incomplete ideas have so far had an effect on the philosophical treatment of this normative ideal: on the one hand, individual self-determination has been understood as the ability of human beings to distance

⁹An excellent survey of the development of the modern idea of autonomy is now provided by J. B. Schneewind, *The Invention of Autonomy* (Cambridge, 1998); however, the historical reconstruction of the theory ends with Kant.

themselves, by a decision of the will, from all those “needs, desires, and drives” that might be experienced as a restriction of the independence of the self; Hegel is convinced that this definition has captured an elementary component of individual freedom, as is shown, for example, by the human capacity for suicide, but in effect it leads to total inactivity because action of any kind is tied to the positing of restrictive purposes (§ 5). On the other hand, merely as the counterpart of the first, solely negative version of free will, Hegel sees a definition that offers the possibility of understanding individual self-determination as the ability to make an informed choice between “given contents”; as § 6 of the *Philosophy of Right* indicates, this category contains, among other things, the approaches to the moral philosophy of Kant and Fichte, who can think of freedom of the will only in terms of a moral deliberation about impulses or inclinations over which the individual has no control. Hegel’s objections to what we might call an “optional” model of “free will” leads to his own characterization of the autonomy of the individual, which to a certain extent provides the pivotal point of the entire construction of the *Philosophy of Right*; for what it means to explain a just or “good” social order by a “representation” of the “existence of free will” is measured above all else by the way the concept of “free will” is understood in detail.¹⁰

Basically, Hegel is able to sum up his objections to the optional model of self-determination in the single formula that here the material of a reflective decision of the will must continue to be regarded as contingent and in that sense as “heteronomous”: as he puts it in his own terminology, “the content of this self-determination” therefore remains something essentially “finite” (§ 15). Thus, while the limitation of the negativistic model of “free will,” in Hegel’s view, consisted in its ability to describe self-determination only as the exclusion of all specific inclinations or purposes, the shortcoming of the optional model was

¹⁰An outstanding interpretation, albeit one that deviates from the reflections that follow, is offered by Robert B. Pippin, “Hegel, Freedom, the Will: The Philosophy of Right (§ 1–33),” in Siep, *Grundlinien der Philosophie des Rechts*, 31–54.

the compulsion to represent the act of self-determination as a reflective choice between inclinations or impulses that are themselves beyond the subject's control—and, as Hegel never tires of repeating, a consequence of such an incomplete definition of freedom is the Kantian dualism of duty and inclination, of ideal moral law and mere instinct-driven nature. In contrast, not surprisingly, the author of the *Philosophy of Right* aims at a more complex model of “free will” in which even the material of individual self-determination loses every trace of heteronomy because it can in its turn be imagined as a product of freedom. Such a demanding concept is supposed to be possible if the will is imagined as an internally reflective relationship, whereby it is able to have an effect on itself as will.

At this difficult point Harry Frankfurt’s famous suggestion to distinguish between “first” and “second-order volitions” is much less helpful than it might appear at first sight.¹¹ The distinction may explain what Hegel means by talking about the will that “has itself as its object” (§ 10); in accordance with Frankfurt’s suggestion, this must refer to the idea that we can understand our impulses or inclinations as expressions of the will (“volitions”) of the first order, which we are able to assess from the perspective of a second order. Based on such a model, it makes sense to regard the human will as a relationship on two or more levels, in which we are able to will or not to will our elementary, subordinate volitions again. But all this proves less than helpful as soon as we turn to Hegel’s more comprehensive formulation that the “free” will must will itself “as free,” that is, as able in its turn to transform into the stuff of freedom the material composed of its impulses and inclinations; for, given this definition, the obvious question will be how to represent impulses in such a way that they can be imagined as “free” and nonfinite.

Here we are offered two alternative interpretations, distinguished by the degree to which they understand Hegel as involved in the project of *radically* sublating contingency in the

¹¹Harry G. Frankfurt, “Freedom of the Will and the Concept of a Person,” *The Importance of What We Care About* (Cambridge, 1988), 11–25.

system of human motivation. On the one hand, Hegel can be interpreted as essentially adopting the Kantian idea of self-determination, but adding the premise that every subject must possess the appropriate inclinations in order to be able to convert the freely chosen decisions into motives.¹² On the other hand, this rather conventional interpretation is countered by the claim that Hegel wanted to draw the idea of individual self-determination so deeply into the structure of human motivation that every subject, and correspondingly every social community, as it were, “naturally” and “spontaneously” sets itself the task of developing and cultivating within itself inclinations and impulses that were consistent with, and in fact an integral part of, true human freedom. In this second case the idea of free will includes the far-reaching demand for a deliberate “working through” of the whole system of human impulses. The key for the choice between the two alternatives, in my view, is supplied by an apparently insignificant passage in the Addition to § 7, in which friendship is described as the paradigmatic pattern for experiencing such a freedom:

But we already possess this freedom in the form of feeling, for example in friendship and love. Here, we are not one-sidedly within ourselves, but willingly limit ourselves with reference to an other, even while knowing ourselves in this limitation as ourselves. In this determinacy, the human being should not feel; on the contrary, he attains his self-awareness only by regarding the other as other. Thus, freedom lies neither in indeterminacy nor in determinacy, but is both at once . . . the will is not tied to something limited; on the contrary, it must proceed further, for the nature of the will is not this one-sidedness and restriction. Freedom is to will something determinate, yes to be with oneself in this determinacy and to return once more to the universal.

At this point we are suddenly faced once more by the first of the four motives Hegel tries to salvage from his early, pre-systematic period in his complete system despite all the new

¹²See, e.g., Allan Patten, *Hegel's Idea of Freedom* (Oxford, 1999), 53.

constructional constraints; for the passage I have just quoted amounts precisely to the concept of freedom that he had previously advanced against the atomism of the various theories of natural right. Here, in contrast to the two defective definitions, Hegel answers the question how “free will” is really to be understood by, roughly, this train of thought: in order to be able to will itself as free, the will must restrict itself to those “needs, desires, and drives,” in short its “first-order volitions,” the realization of which can again be experienced as an expression, or confirmation, of its own freedom. But that is possible only if the object of the desire or inclination itself has the quality of being free, because only such an “other” can really enable the will to experience freedom. It is easy to see why Hegel can present this construction as a synthesis of the two models that were earlier described as defective: from the second, “optional” model he adopts the idea that individual self-determination must consist in a reflective restriction to a specific aim, and from the first the notion that autonomy must always have the form of an unrestricted experience of self, so that, adding the two together, “free will” can be described as “being with oneself in the other.”¹³ Naturally, this proposed solution contains a number of unclarities, which are resolved in later passages of the *Philosophy of Right*; for example, the concept of “education” in the Introduction provides only a vague indication of how the reflective restriction to a specific aim can be presented as anything other than a “choice” or an “arbitrary act.” But, on the other hand, this model of a “free will,” which clearly reveals the contours of a communicative model of individual freedom, allows us to describe somewhat more precisely the program of the *Philosophy of Right* as intended by Hegel.

As we have already seen, Hegel would like to develop the principles of a just social order by representing the “existence of free will”; as we have also seen, “existence” is supposed to

¹³On the concept of “communicative freedom,” see Michael Theunissen, *Sein und Schein* (Frankfurt, 1978), chap. 1, sect. 1, 2; Dieter Henrich, “Hegel und Hölderlin,” *Hegel im Kontext* (Frankfurt, 1971), 9–40; Hinrich Fink-Eitel, *Dialektik und Sozialetik* (Meisenheim am Glan, 1978), sect. D, E.

mean the totality of external, social, or institutional conditions the “free will” needs in order to realize itself. By clarifying more accurately what Hegel means by the principle of “free will,” this provisional definition of the task can be expanded by an essential ingredient: as the quintessence of a just social order he regards those social or institutional conditions that allow each individual subject to enter into communicative relationships that can be experienced as expressions of their own freedom; for it is only insofar as they can participate in such social relationships that subjects are able without compulsion to realize their freedom in the external world. To put this intention of Hegel in somewhat more general terms, one might perhaps say that he regards communicative relationships as the “basic good” in which all human beings must take an interest for the sake of realizing their freedom; however, we must hasten to add that Hegel, unlike Rawls, does not believe that this basic good can be distributed fairly according to some principles; what he is driving at is rather the idea that the “justice” of modern societies depends on their ability to make it possible for all subjects equally to participate in such communicative relationships.¹⁴

This supposition receives further support if we add the last definition given by Hegel in connection with the basic formula of his *Philosophy of Right*; in § 29 he had written that any “existence” that is the “existence of free will” should be called “right.” An explanation of this rather unclear formulation, which is supposed to determine the range of the concept of right, is found in the subsequent paragraph, which can be regarded as a further key passage of the entire Introduction; here it becomes clear that the term *right* has the double meaning of a “necessary condition” and a “justifiable claim”: “Each stage in the development of the Idea of freedom has its distinctive right, because it is the existence of freedom in one of its own determinations. When we speak of the opposition between morality or

¹⁴Suggestions in this direction can be found in Charles Taylor, “The Nature and Scope of Distributive Justice,” *Philosophy and the Human Sciences* (*Philosophical Papers* 2) (Cambridge, 1983), 289–317; see also Charles Taylor, “Irreducibly Social Goods,” *Philosophical Arguments* (Cambridge, MA, 1993), 127–45.

ethics and *right*, the right in question is merely the initial and formal right of abstract personality. Morality, ethics, and the interest of the state—each of these is a distinct variety of right, because each of them gives determinate shape and existence to *freedom*” (§ 30). If we disregard the use of terms such as *ethics* and *interest of the state*, the meaning of which is not explained more accurately till later in the text, this passage shows unmistakably that Hegel means something far more comprehensive by “right” than other philosophers of his time: unlike Kant or Fichte, to whom “right” meant human coexistence regulated by the laws of the state and who relied most of all on the coercive power of the state, he understands that term to cover all those social conditions that can be proved to be necessary for the realization of the “free will” of every subject. But, in his view, what must be given in “existence,” or social reality, to enable the individual “free will” to develop and realize itself, is not completely absorbed by the single institution of legal right; rather, as we have already seen, the prerequisites of such a realization must include some essentially communicative relations that will enable the individual subject to be “with oneself in the other.”¹⁵ At first sight, Hegel’s use of the title *Philosophy of Right*, which meant something else then just as it does today, seems mistaken or misleading; while the term is generally understood to mean an attempt to provide a normative justification of the social role of legal rights, Hegel’s intention appears to be to supply a kind of ethical representation of the social conditions for individual self-realization; and because in these conditions the legal right, as suggested by the sense of the above quotation, forms a separate, albeit only “formal” element, one could at best talk about an ethical theory of legal right rather than a *Philosophy of Right*. However, such a manner of speaking would ignore the reason Hegel himself gives in the passage I quoted

¹⁵For this comprehensive concept of Hegel’s notion of right, see Siep, “Verunftrecht und Rechtsgeschichte”; see also Siep, “Philosophische Begründung des Rechts bei Fichte und Hegel,” in *Praktische Philosophie im deutschen Idealismus* (Frankfurt, 1992), 65–80; Allen W. Wood, *Hegel’s Ethical Thought* (Cambridge, 1990), 71.

to justify his specific, comprehensive use of the title *Philosophy of Right*: all forms of social existence, insofar as they can be proved to be necessary conditions for the realization of “free will,” may be called “rights” because they are allocated a specific “right” in each case.

Hegel owes this conceptual proposition to a transference of the modern concept of “right”—the normative idea that subjects have some claims that are generally justified and sanctioned by the state—from the sphere of the individual to social conditions or structures as a whole. In his usage of the concept of right in the *Philosophy of Right*, universal rights initially are not attributed to individuals but to those forms of social existence that can be proved to be social “basic goods” serving the realization of “free will.” This usage of the term becomes even clearer when we try to answer the further question about what the justifiable claims of the various spheres might be; what Hegel means is apparently that such spheres, in proportion to the degree of their irreplaceability in making individual self-determination socially possible, have the right to occupy a legitimate place in the institutional order of modern societies. Thus the bearers of the “rights” that the *Philosophy of Right* is concerned with in the first instance are those social spheres and practices that have a justifiable claim to be maintained and carried on by society as a whole; and the purported guarantors of such “rights” of spheres, institutions, or systems of practices must be all the members of those societies who are characterized by the normative principle of individual self-determination.

It is this extremely idiosyncratic usage of the concept that led Hegel to entitle his own attempted theory of social justice *Philosophy of Right*; in so doing he did not merely want to underline, through the choice of a name, the challenge that his own enterprise was bound to represent to Kant’s or Fichte’s approach to the philosophy of right in spite of the many features they all had in common; rather, through the choice of that title, he consciously gave his theory a turn toward the normative, because his usage of the category of right required him to supply rational reasons for the legitimacy or validity of the “existential claims” made by the different social spheres. It should be clear

by now that these reasons were to be justified by a “presentation” of the necessary conditions of individual self-realization; and it should also be clear that the yardstick for such a “descriptive” justification is provided by the principle of irreplaceability in the social enabling of self-determination.¹⁶ To that extent Hegel’s *Philosophy of Right* represents a normative theory of social justice that, by reconstructing the necessary conditions of individual autonomy, tries to determine what social spheres a society must comprise or make available in order to give all its members a chance to realize their self-determination. In this program it is also easy to recognize the second intention that Hegel has kept alive since his youthful phase in Jena and revived in the mature shape of his practical philosophy: if we add what we have so far discovered about the basic good of communicative relations, the central intention of the *Philosophy of Right* is seen to be the development of universal principles of justice in terms of a justification of those social conditions under which each subject is able to perceive the liberty of the other as the prerequisite of his own self-realization. With this interim result in mind, it no longer seems too difficult to assess the basic structure and organization of the text in detail.

“RIGHT” IN THE *PHILOSOPHY OF RIGHT*: NECESSARY SPHERES OF SELF-REALIZATION

The title and intention of Hegel’s *Philosophy of Right* must have struck its original readers as surprising and bizarre, but its structure and division into chapters and sections will also have

¹⁶An interesting discussion of how far Hegel’s *Philosophy of Right* should be understood as a normative theory is found in Vittorio Hösle, *Hegel’s System* (Hamburg, 1987), 2:417–23. My own suggestion differs from Hösle’s proposed interpretation, in that I regard the concept of “objective spirit” or “rational reality” as such as normative insofar as we can speak here of rationality only with regard to the moral principle of “free will”: what can be called “rational” in relation to social reality is measured by the fulfillment of not only cognitive but moral demands.

seemed unfamiliar. The clarification of the intention behind the programmatic formulations of the Introduction may have created the reasonable expectation that the subsequent implementation of the theory would essentially consist in the straightforward reconstruction of the communicative conditions of individual self-realization; but if we assumed that such a simple pattern of argument really represented the structural principle of the text we would be underestimating not only the pressure exerted by the system on the *Philosophy of Right* but also Hegel's far more complex intentions. In developing his theory of justice, Hegel's aim was not only to reconstruct precisely those spheres of intersubjective action that are indispensable for the realization of "free will," given the communicative structure of freedom; rather, he also wanted to allocate a legitimate place in the institutional order of modern societies to those conceptions of freedom that are necessary, but not sufficient—and therefore incomplete—conditions for individual self-realization. Thus the binary division Hegel introduces into his theory of justice arises first from the distinction between incomplete and complete conditions for the realization of "free will": while he is convinced that only communicative relationships based on the pattern of friendship actually allow the individual subject to realize his freedom, he nevertheless concedes that other, incomplete concepts of freedom are a necessary prerequisite for the emergence of such a practical freedom. In the idiosyncratic terminology of the *Philosophy of Right*, Hegel's concern must be to clarify the hierarchy of the "rights" associated with all the different understandings or spheres of freedom and show how they must come together to enable the complete realization of "free will"; and, to continue the argument, the aim of such a systematic lineup would be to allocate to the different conditions of freedom the precise place in the structure of modern societies that they must occupy in the process of enabling individual self-realization.

However, this reflection represents only a preliminary stage in the attempt to understand adequately the confusing structure of the *Philosophy of Right*. If Hegel had been guided only by the division into necessary and sufficient conditions of freedom, the

most obvious thing would have been for him to break down his treatise into two parts; however, the *Philosophy of Right* comprises three substantial sections which deal, in this order, with “Abstract Right,” “Morality,” and “Ethical Life.”¹⁷ It is true that this tripartition can be seen to reflect again the two types of conditions of freedom, because only the third section, entitled “Ethical Life,” with its chapters about “the Family,” “Civil Society,” and “the State,” seems to deal really with communicative spheres of action, while the first two sections are concerned only with individualistic conceptions of freedom, so that the contrast between incomplete and complete conditions in the background obviously plays a certain part in determining the structure. But as far as the explicit division is concerned, the fact remains that Hegel is trying to reconstruct the necessary conditions of individual self-realization in three separate steps: the opening section about “Abstract Right” is joined by the section about “Morality,” which is followed by the fundamental closing section about “Ethical Life” as a synthesis. If we want to avoid a superficial explanation of this tripartition by resorting to Hegel’s *Logic*, which offers a wealth of arguments in favor of such a three-stage procedure, we may find the key in remembering the discussion of the three conditions of “free will,” which take up substantial parts of the Introduction.

An attempt at explaining the tripartite structure of the *Philosophy of Right* with the help of the distinctions I made there would take roughly this shape: first, Hegel is convinced that by distinguishing the three concepts of “free will” he has opened up the entire spectrum of possible models of freedom in the modern world; second, he assumes that all three models of freedom contain essential and indispensable aspects of the social attitudes and practices and that these aspects must be brought into an explicit theoretically articulated relation to each other if we are to explain the communicative conditions of individual self-determination; third, he believes that all these

¹⁷For some interesting suggestions on how to interpret this tripartite division see, among others, Ilting, “Die Struktur der Hegelschen Rechtsphilosophie,” and Westphal, “Hegel’s *Philosophy of Right*.”

models of freedom have not remained mere abstract ideas or theoretical concepts but have in their turn already gained so much influence on social processes in the modern world that they must be treated as “manifestations” of the objective spirit and appraised as to their “rights.”¹⁸ If it is indeed these three premises that underlay Hegel’s structural intentions, regardless of any considerations of his system, the tripartition of the text reveals a systematic and quite comprehensible meaning. Before it becomes possible to determine the nature of those conditions that are necessary and sufficient for individual self-realization, that is, before the institutional conditions of communicative freedom can be sketched under the title “ethical life,” it is necessary to determine the restricted role that must be played by the two other, incomplete models of freedom in modern society, because they contain some constitutive prerequisites for individual participation in that communicative sphere. In that sense the two sections that precede the real core of the *Philosophy of Right* represent Hegel’s systematic attempt to clarify the legitimate claim to existence of two definitions of individual freedom, both of which, in his view, independently of each other, have gained a substantial influence on society’s practical self-understanding, even though they are able only to encompass some partial aspects of self-determination. Under the heading “Abstract Right” he wants to fix the social location of the modern conception of freedom, according to which the individual subject exercises his freedom in the form of subjective rights, while under the heading “Morality” he tries to outline the legitimate location of the modern conception of freedom according to which the freedom of the individual subject is characterized by his capacity for moral self-determination.

This tripartite structure of the *Philosophy of Right*, which has its own inherent rationale and is not dependent on the formal structure or requirements of Hegel’s system, does not merely presuppose a certain symmetry between his characterizations

¹⁸The idea that for Hegel “abstract right” and “morality” are influential and powerful concepts of freedom in the modern world is well developed in Allan Wood, “Hegel’s Ethics,” in *Cambridge Companion to Hegel*, ed. Beiser, 211–33.

of the incomplete conception of “free will” and his definitions of “abstract right” and “morality”; it also implies that he was actually engaged in an ingenious quest to represent both restricted models of freedom as socially influential complexes of ideas which, in their correct location, would prove to be among the necessary institutional prerequisites of communicative freedom. I am convinced that Hegel sets out to supply proof for both premises in the first two sections of his *Philosophy of Right*. In so doing he must have found it much easier to elaborate the first thesis than processing the proof demanded by the second. With respect to the first thesis, he can restrict himself to uncovering in both models of freedom—“abstract right” and “morality”—the characteristic features that turn them into the expression of a merely “negativistic” definition in the case of the former and into the expression of an “optional” definition of “free will” in the case of the latter. The demonstration of the first thesis is connected to the more far-reaching supposition that, given a reduction of individual freedom to moral autonomy, the subject continues to depend on contingent impulses or drives. It must, however, have been much more difficult for Hegel to document the second thesis, which I have only touched on so far, and which asserts that if those two restricted models of freedom are correctly placed, their constitutive significance for all the communicative forms of freedom can be proved. Here the question that immediately arises is what we may mean when we speak of an adequate place, or an appropriate “right” of the attitudes connected with such ideas of freedom in the institutional fabric of our intersubjective freedoms.

The multilayered argumentation with which Hegel tries to answer this question in the first two sections of his text represents one of the greatest challenges of his practical philosophy to this day; that is one of the reasons why, in an examination of the *Philosophy of Right*, it is pointless to concentrate exclusively on the section about “Ethical Life,” taking it to some extent for the sum of the whole. Hegel conducts his argument negatively in the sense that he tries to circumscribe the appropriate “place,” or the specific “right,” of the two incomplete models of freedom by demonstrating the social damage their

comprehensive use would lead to. The decisive argument runs as follows: if either of the two ideas of individual freedom is treated as an absolute, be it in the form of a legal demand or equated with moral autonomy, the social reality itself will undergo some pathological dislocations that are a certain, almost “empirical” indication that the limits of legitimacy have been transgressed.¹⁹ Thus, by illustrating the negative consequences that are bound to occur if incomplete, or inadequate, conceptions of freedom are allowed to establish themselves in society in complete independence, it is possible step by step to fathom the proper place in our communicative practice to which their structure entitles them.

Two background convictions allow Hegel to use such an indirect method of justification in his diagnosis of the age. First, he is empirically certain that in his own time those two models of freedom have not only become powerful influences in the social world but also that as a result of being treated as absolutes they have caused the first dislocations in the practical relations of the subjects with themselves. This enables him, at several points of the text, to scatter references to pathological conditions and phenomena that can be regarded as indicators of a violation of the legitimate borders of “abstract right” and “morality”; and the terms with which he tries to characterize such social pathologies are words used in diagnoses of the age such as *solitude* (§ 136), *vacuity* (§ 141), or *burden* (§ 149), all of which can be reduced to the common denominator of “suffering from indeterminacy.” But in order to help his diagnosis of the age acquire a systematic significance for the *Philosophy of Right*, Hegel must resort to a second assumption, which is far more theoretically relevant: to maintain a necessary connection

¹⁹In this methodological respect, but in none other, Hegel’s approach resembles that of Alasdair McIntyre in *After Virtue*: the plea for a different, more extensive, understanding of freedom is developed in the light of a diagnosis of the social damage or pathology that the false or incomplete understanding of freedom under criticism leaves behind in the individual’s relation to himself; a structurally comparable argumentation is found in Michael Theunissen, *Selbstverwirklichung und Allgemeinheit: Zur Kritik des gegenwärtigen Bewußtseins* (Berlin, 1982).

between those pathological states and the treatment of two incomplete models of freedom as absolutes, he must be able to demonstrate that social reality is not indifferent to the use of those false or incomplete definitions of human existence. Here the central part is played by his conviction that social reality is always permeated by rational reasons to such an extent that a practical infringement of them is bound to create dislocations in social life. It is these two ideas that Hegel asserts in the first two sections of his *Philosophy of Right* in an extremely provocative form; together they allow him to combine his draft of a theory of justice with a diagnosis of the age intended to convince his contemporaries that in their “burdened” state of mind they can find good reasons to let themselves be persuaded by his plea for an ethical relationship of communicative freedom.

II

The Connection between the Theory of Justice and the Diagnosis of the Age

BEFORE continuing my attempt at an indirect reactualization of Hegel's *Philosophy of Right*, it will probably be sensible for me to provide a brief summary of what we have learned so far about the intention and the structure of the work. Starting with the intentions that guided Hegel's efforts, we found roughly the following: in agreement with Kant and Fichte, the author of the *Philosophy of Right* is convinced that any normative theory of justice in modern societies must be anchored in the principle of equal individual freedom for all subjects; but in contrast to his two predecessors he believes, returning to some of the themes of his early writings, that such a concept of the autonomy of the individual, or freedom, must be understood in a more complex fashion if the raw material of reflective self-determination—our “first-order volitions”—is to be comprehended as an element of freedom or, to put it better, as a medium of self-expression. What that means is explained by Hegel in paradigmatic fashion with reference to friendship, in which we deliberately restrict ourselves to the preferential treatment of a certain inclination, but which we experience, nevertheless, as unrestricted, free self-realization; therefore, a sufficiently complex concept of individual freedom must be devised to generalize this one case of friendship in order to arrive at the communicative structure of “being with oneself in another.” We are really free only where we are able to shape our inclinations and needs in such a way

that they are directed toward the universal in social interactions, which in turn can be experienced as an expression of unlimited subjectivity. In allusion to the later writings of Harry Frankfurt, one might say that real freedom consists in self-restraint for the sake of others, which again can be experienced as the strongest expression of an uncoerced subjectivity, of “being with oneself in another.”¹

Here Hegel has a first opportunity to anticipate his general theory of modern justice, because he shares with Kant and Fichte the belief that such a conception must essentially be able to determine the conditions for the realization of autonomy or “free will.” If freedom of the individual means first and foremost “being with oneself in the other,” then the justice of modern societies is measured by their ability to guarantee for all their members equally the conditions of such a communicative experience and thus enable every individual to participate in conditions of undistorted interaction. In this sense we may go so far as to say that Hegel, in the name of individual freedom, awards the special distinction of a “basic good” to those communicative relations that modern societies manage essentially by appealing to considerations of justice; but naturally, as I have said before, we must not allow the economic term *good* to mislead us into imagining that in defining justice Hegel was concerned with rules for distribution in Rawls’s sense; rather, he seems to work on the hypothesis that communicative relations fall under the class of goods that can be produced and preserved only through collective practices, so that at the most

¹Cf. Harry G. Frankfurt, “Autonomy, Necessity, and Love,” in *Necessity, Volition, and Love* (Cambridge, 1999), 129–41; “On Caring,” *ibid.*, 155–80. However, the divergences from Frankfurt’s concept are also instructive in relation to the further clarification of Hegel’s concept of freedom: first, unlike Frankfurt, Hegel confines the objects of individual self-restriction, which must be experienced as an expression of individual freedom, exclusively to other subjects, quite in the spirit of his communicative understanding of freedom; second, while not allowing the process of electing the “object” of self-restriction, or unconditional “caring” in Harry Frankfurt’s sense, to take the form of an uncontrollable, fateful event, Hegel grants the possibility of an “education” of the individual toward such self-restrictions.

we can talk about ways in which the prerequisites of such practices can be provided collectively and universally.² Incidentally, I am convinced that if we were to elaborate these differences between Hegel and Rawls further, we would arrive exactly at the point where the outline of the conception of justice in the *Philosophy of Right* becomes recognizable.

At the close of this brief summary we see that Hegel's intention in his *Philosophy of Right* is to establish a normative principle of justice in modern societies that is made up of the sum of all the necessary conditions for individual self-realization; and that what matters to him, as his idiosyncratic use of the category of right shows, is that the justification of the state as the organ representing all its citizens lies in its task of upholding the different communicative spheres that jointly assist every subject in achieving self-realization. For further clarification, we may again resort to a comparison with an author of our own time whose theory of right matches Hegel's *Philosophy of Right* in complexity. While Habermas, in *Between Facts and Norms*, develops a normative conception deriving the legitimacy of the legal system that is embedded in a certain state from the role of this system as guarantor of conditions for the formulation of democratic will,³ Hegel starts with the self-realization of the individual and derives the task of a modern legal system from these conditions of self-realization; the fact that in his case the communicative spheres come to the fore is due to the specific way in which he defines the structure of the freedom of the "free will."

If it was difficult to elucidate Hegel's intentions in the *Philosophy of Right*, it was by no means easier to decode the significance of the structure underlying the development of his theory; for at first sight the peculiar composition of the treatise—starting with "abstract right," continuing with "morality" and ending with "ethical life"—makes it almost impossible to establish any plausible connection between intention and structure. At this

²Remember the observations of Charles Taylor in "Irreducibly Social Goods," *Philosophical Arguments* (Cambridge, MA, 1993), 127–45.

³Jürgen Habermas, *Faktizität und Geltung* (Frankfurt, 1992).

point it proved helpful to follow the suggestion to see the three large sections of the book in parallel to the three conceptions of freedom that Hegel described in his Introduction as a decisive force in modern societies: as the theory was further elaborated, what he established in the Introduction as necessary elements of a comprehensive and complete concept of “free will”—the “negative,” the “optional,” and finally the “communicative” notion of freedom—were presented in the form of discrete social spheres that follow each other in an ascending line, one by one, but that must act together to assist the individual subject in the process of self-realization. Guided by this suggestion, we find the key to an interpretation of the structure of the *Philosophy of Right* in the idea that two conditions must be fulfilled, so to speak, before subjects are capable of self-realization in the communicative structures of the ethical sphere. On the one hand, there must be a framework in which they learn to understand themselves as persons bearing rights, or as legal subjects; on the other hand, there must be a moral order that makes it possible for them to understand themselves, in addition, as bearers of an individual conscience, or as moral subjects; and, Hegel seems to be saying, it is not until these two moralities, each of which in its own way allows the subject to situate himself in the world, have fused into a single practical identity that the individual in search of his place will be capable of an effortless self-realization within the institutional fabric of modern ethical life.

SUFFERING FROM INDETERMINACY: PATHOLOGIES OF INDIVIDUAL FREEDOM

These reflections anticipate the solution of a problem that probably causes Hegel in his *Philosophy of Right* the greatest difficulties and to which he therefore devotes many pages of tortuous argumentation. Hegel’s own formulation creates the impression that the role played by the two subordinate, incomplete models of freedom in the totality of the conditions of freedom in modernity had been clear from the start, or at any rate that

Hegel had already plausibly demonstrated that these two models of freedom had to be seen as subordinate to freedom in the full sense. That this is not the case, indeed that Hegel regarded this question as the crucial challenge to his *Philosophy of Right*, is revealed by the special perspective in which he perceived the practical moral conditions of his time—a time, as he saw it, characterized by the social tendency to take either legally defined freedom or moral autonomy for the whole of individual freedom, with the result that each of the two concepts could claim to represent the whole. Accordingly, Hegel's works contain innumerable passages pointing out the dangers attendant on detaching morality from its wider context and construing it as a fully independent sphere that could autonomously pass judgment on the ethical life as a whole; in an equal number of other passages Hegel points out the negative effects of accepting only those freedoms defined by law.⁴ However, even if it is possible to recognize these two tendencies toward detachment as the most emphatic sociocultural signs of the times, it is far from clear, either in a concrete everyday or in a theoretical sense, where legal and moral freedom, respectively, should legitimately be located; rather, what Hegel sees prevailing in the heads of his contemporaries is a massive confusion about how to establish appropriate relations for the various newly produced models of freedom. Therefore he must embark on the task of providing the relatively obvious solution that I have already indicated: in order to prove his theory of justice, he must elaborate the functions to be adopted by legal and moral

⁴Of course, it is above all *The Phenomenology of Spirit* that may be understood as a critique, motivated by a diagnosis of the age, of such modern forms of consciousness, or restricted models of freedom, with all their pathological consequences; among more recent writers, this connection with contemporary history is developed particularly clearly in Terry Pinkard, *Hegel's Phenomenology: The Sociality of Reason* (Cambridge, 1994), esp. chap. 5; Gustav-Hans H. Falke, *Begriffene Geschichte: Das historische Substrat und die systematische Anordnung der Bewusstseinsgestalten in Hegels Phänomenologie des Geistes* (Berlin, 1996); a magnificent survey of Hegel's diagnosis of his age is still Taylor, *Hegel and Modern Society* (Cambridge, 1979).

freedom with regard to the communicative conditions of freedom that he envisions in the concept of ethical life.⁵

At this point I can resume my case where I left it at the end of the last part. I closed with the hypothesis that Hegel, in resolving the tasks outlined beforehand, uses a procedure demonstrating the pathological effects that are bound to result for the subjects' relations with themselves if either of the two incomplete concepts of freedom becomes detached from its social context and is taken to be exclusively authoritative; and in this connection I had only vaguely followed up the close link between such a diagnostic procedure and the concept of "objective spirit" in Hegel's *Philosophy of Right*. The necessity of this link, I asserted, is proved by the fact that Hegel can talk in systematic fashion about the negative effects of false concepts of self in social reality only if he assumes that there is a rational structure underlying our social practices that is not indifferent to misinterpretations; for then it can be argued that a false or one-sided understanding of self—since it violates the rationality of social reality—is bound to have grave practical consequences that must be reflected in a "suffering from indeterminacy." The part of my attempted reconstruction that follows will essentially serve to prove the following thesis: Hegel enlightens us about the exact position that legally and morally determined freedoms must hold in a comprehensive concept of modern justice, and he does so by diagnosing the negative ef-

⁵This formulation of Hegel's real intention reveals the difference between my proposed interpretation and the fascinating interpretation of Christoph Menke in *Tragödie im Sittlichen: Gerechtigkeit und Freiheit nach Hegel* (Frankfurt, 1996). While Menke recognizes in Hegel's practical philosophy above all the portrayal of a tragic tension between the two models of freedom, moral autonomy and individual authenticity, I see in Hegel's *Philosophy of Right* the foundations of a promising attempt to abolish the one-sided treatment of legal and moral autonomy in a communicative model of freedom; in contrast, in Menke, the *Philosophy of Right* appears only as the false solution of the fundamental tension between autonomy and authenticity (*ibid.*, 150). In support of my own suggested interpretation, cf. Richard D. Winfield, "Freedom as Interaction: Hegel's Resolution to the Dilemma of Liberal Theory," in *Hegel's Philosophy of Action*, ed. L. S. Stepelevich and David Lamb (Atlantic Highlands, NJ 1983), 173–90.

fects that are bound to follow if either kind of freedom becomes detached from our social lifeworld. He arrives at this bold, indeed unique, synthesis of a theory of justice and a diagnosis of his age with the help of his concept of “objective spirit,” which, if we deduct all the metaphysical presuppositions, leaves us with the idea that social reality is permeated by rational reasons that we cannot infringe without consequences for our relationship with ourselves. Nevertheless in my indirect actualization I must proceed by first developing the positive function granted to abstract right and morality in Hegel’s concept of justice; and only then will it be possible, in introducing the concept of “ethical life,” to sketch the diagnosis with which he tries to determine the precise place of the two notions of freedom in a theory of communicative freedom.

In the course of the reconstruction so far it became apparent that in the first two sections of his work, “Abstract Right” and “Morality” respectively, Hegel has to solve two tasks simultaneously: together with the positive function, or ethical significance, of the two concepts of freedom in relation to individual self-realization, he must also show their necessary limits so that their place in the totality of our modern system of justice can be determined. It has become clear that, for Hegel, the value of the two concepts of freedom arises from the irreplaceability of the role they must assume in the process of individual self-realization, while their limits are set by the fact that they do not suffice, either singly or jointly, to safeguard the demanding conditions in which every individual can achieve uncoerced self-realization. Since it is these two tasks that Hegel tries to solve in the first two sections of his treatise, it seems reasonable at this point to talk about an ethical theory of right and morality: what needs clarifying is the value of subjective rights and moral autonomy, given the aim of making the realization of individual freedom possible.⁶ It is striking that in the two sections Hegel proceeds in accordance with the theory of

⁶On the idea of an ethical justification of subjective rights, see Joseph Raz, “Rights and Individual Well Being,” *Ethics in the Public Domain* (Oxford, 1994), 44–49.

action, which has time and again resulted in a lack of understanding and confusion. He is less interested in subjective attitudes than in the kind of actions that follow theoretically if freedom is understood either as a subjective right or as moral autonomy; in the course of the discussion, in parallel with the levels occupied by the different concepts of freedom, a sequence of action models, characterized by ascending degrees of theoretical complexity and social appropriateness, comes into being.⁷ The connection between this action-theoretical procedure and Hegel's general intention is not difficult to guess, once the aim of his descriptive justification is taken into account: if the final aim is to bring together, under the concept of "ethical life," the sum of communicative spheres characterized by specific forms of intersubjective action, it makes sense to carry out the analysis in action-theoretical terms right from the outset; what is thereby ensured from beginning to end is the possibility of carrying out the ethical comparison between the single spheres in one and the same terminology. In addition, such a procedure offers Hegel a further advantage, which I can mention only in passing, even though it certainly contains another surprising twist of the *Philosophy of Right*: since the individual concepts of freedom are reconstructed in terms of a theory of action, the step-by-step argumentation can also be understood as an attempt to outline a kind of social ontology; with each element that is added to the initially primitive concept of action, in parallel with the increasingly complex models of freedom, the set of concepts used by Hegel moves closer to the point at which it can finally be employed to describe the complexity of social realities in a fully adequate way.

⁷This essentially action-theoretical feature of the work, which in my view serves the purpose of developing the categorial framework of a theory of modern societies by way of the gradual accumulation of a theory of actions, is only slowly being recognized in the literature. Beginnings are supplied by Charles Taylor, "Hegel and the Philosophy of Action," in *Hegel's Philosophy of Action*, ed. Stepelevich and Lamb, 1–18; Guy Planty-Bonjour, "Hegel's Concept of Action as Unity of Poiesis and Praxis," in *Hegel's Philosophy of Action*, ed. Stepelevich and Lamb, 19–30; and above all, Michael Quante, *Hegel's Begriff der Handlung* (Stuttgart, 1993).

Admittedly, the action-theoretical approach makes it considerably harder to understand Hegel's arguments, for in his search for parallels in the action model he devotes his presentation entirely to the question of what practical consequences would follow if either of the two incomplete concepts of freedom were taken for individual self-realization as a whole. Therefore, in the characterization of "abstract right" or "morality," he often loses sight of that aspect which actually makes both appear suitable as bearers of value for the communicative sphere of ethical living; what explains this special aptitude is the normative attitude, or orientation, connected with the two notions of freedom, but not the action that would result if we acquired our self-understanding exclusively from one of the two sources. However, this problem will not become really relevant before the section on "morality" and can be neglected in interpreting the observations on "abstract right."

In paragraphs 41–81 Hegel reconstructs the normative nucleus of modern natural and rational right, demonstrating in his own language its contribution to the realization of individual freedom. Every subject needs it to be the case that some external objects (or others) are always there for his use to illustrate his own free will in external reality (§ 45); however, he can claim that prerogative as an established right only on condition that all subjects mutually grant each other the same right. To that extent the principle that supports formal right as a sphere of reciprocal established claims consists in the imperative "Be a person and respect others as persons" (§ 36), where "person" means a bearer of legal claims. From this point it is not difficult to derive contracts as a further central element of formal right, because they give the subjects the chance to exchange goods or services in their own interest by mutual agreement. Hegel, in his succinct account, leaves no doubt that formal right is an intersubjective institution, but one in which the subjects are involved only by a minimal part of their personality; what is expressed in the principles of private right is no more than the negative side of individual freedom of the will that lies in the negation of "every concrete limitation and validity" (§ 35); for by guaranteeing the right to property and freedom of contract,

the individual is given the chance only to carry out a multitude of possible connected actions without having to commit himself to asserting his right to any one of them. That is also why Hegel can infer without undue exertion that abstract right leaves open exactly that amount of individual freedom that is necessary for the strategic interaction between independent persons; the freedom of the other here appears only as the means of satisfying one's own interest in keeping open as many options as possible.⁸

But, given this conclusion, what could be the value of abstract right for the pursuit of individual self-realization? And what pathological effects might ensue if a subject interprets his freedom exclusively according to the principle of subjective rights? The first question is far more difficult to answer than may seem at the outset; for Hegel's own explanation in this text of the value of abstract right in relation to freedom—that is, the assured possibility of subjective action and self-realization in the external world—cannot offer a satisfactory solution to the problem. It is precisely in this role that private right will emerge later, in the “Ethical Life” section, as a central element of the institutional texture of civil society; therefore this role cannot be used to explain how far abstract right should be attributed an independent value, separate from all ethical life, in relation to individual self-realization. But where else should the ethical significance of abstract right be found, if not in the role that makes it part of the ethical sphere?

At this point it may be helpful to take a look at the second question and hope that the provisional answers we find will lead us to some conclusions for the first. There are a few passages in the first section of the *Philosophy of Right* where Hegel clearly tries to indicate the nature of the pathological effects that result

⁸From among the large amount of writings on “abstract right” I will mention only two particularly clear interpretations: Michael Quante, “Die Persönlichkeit des Willens als Prinzip des abstrakten Rechts,” in *Grundlinien der Philosophie des Rechts (Klassiker Auslegen*, vol. 9), ed. Ludwig Siep (Berlin, 1997), 73–94; and Allen W. Wood, *Hegel's Ethical Thought* (Cambridge, 1990), part II.

from granting exclusivity to abstract right; in one of these we read:

If someone is interested only in his formal right, this may be pure stubbornness, such as is often encountered in emotionally limited people; for uncultured people insist most strongly on their rights, whereas those of nobler mind seek to discover what other aspects there are to the matter in question. Thus abstract right is initially a mere possibility, and in that respect is formal in character as compared with the whole extent of the relationship. Consequently, a determination of right gives me a warrant, but it is not absolutely necessary that I should pursue my rights, because this is only one aspect of the whole relationship. (§ 37, Addition)

Here Hegel seems intent on reducing the problems that arise when legal freedom is treated as an absolute to the level of individual character traits: only excessively stubborn people are inclined to a dogmatic, rigid insistence on their subjective rights, while context-sensitive people are able to assert their rights in proper moderation. Because of this move to characterology, the passage quoted above is still a long way from the insight Hegel formulates retrospectively in the section on “ethical life” when he tries to establish the pathological nature of a fixation on legal freedom: that is the insight that those who articulate all their needs and intentions in the categories of formal right become incapable of participating in social life and must therefore suffer from “indeterminacy.”⁹⁹ But, on the other hand, Hegel’s remark also indicates the ethical value due to formal right in relation to individual self-realization: for the correct, balanced application of legal powers presupposes the development of an awareness of the connection between subjective rights and individual opportunities. The individual must learn, so to speak,

⁹⁹This, in my view, becomes particularly clear where Hegel criticizes Kant’s model of marriage as a contract (§ 75, § 163). Here the objection leads to the thesis that a one-sided perception of marriage or family as a merely legal relationship would result in an incapacity to participate in the communicative practices of mutual affection and care.

that the negative character of formal right also holds the great advantage of allowing him, if necessary, to withdraw beyond all concrete commitments and social roles in order to insist exclusively on his own indeterminacy and openness. To that extent, to put it in a paradox, the value of formal right, for Hegel, consists in the mere consciousness of being a bearer of rights; this enables the individual to keep open, within the sphere of the ethical life, a recognized possibility of withdrawal behind all the norms associated with that life. Thus the first outlines begin to emerge of what Hegel, in his sketch of a theory of justice, regarded as the function and boundaries of abstract right: to maintain an awareness of legitimate individualism within ethical life. In contrast, the boundaries of abstract right become apparent as soon as all social relations are presented in the categories of legal claims.¹⁰

While the section entitled “Abstract Right” can be summarized without great difficulty in these two separate statements, the situation is quite different with regard to the subsequent section entitled “Morality”; here Hegel tries to reach the outer limits of the possible, by blending theoretical reflections with historical derivations and observations on his own time, in order to provide a comprehensive analysis of the role that the idea of moral autonomy plays in our practical social life. There is hardly a chapter in the body of Hegel’s writings, with the possible exception of the section about the dialectic of master and servant, that has attracted more attention, but also none that has encountered more disapproval and vehement criticism. Among the many aims Hegel pursues in this one section, first and foremost is again the attempt to establish both the ethical value and the boundaries of the idea of moral autonomy; but in the same context we find a sketch of the thesis that the impulse for the development of romantic individualism had come from

¹⁰This conclusion is compatible with the position described, for example, by Jeremy Waldron in connection with the value of subjective rights in the context of affective relations: Jeremy Waldron, “When Justice Replaces Affection: The Need for Rights,” *Liberal Rights: Collected Papers, 1981–1991* (Cambridge, 1993), 370–79.

the moral individualism of Kant, and this diagnosis of the age is also discussed under “Morality.” In addition, step by step and in parallel with the concept of freedom, Hegel continues the argument designed to develop a theory of action equal to the complexity of social conditions, and finally, still in the same section, he outlines the explanation of why all the prerequisites for the realization of free will are found only in the communicative sphere of ethical life. In this brief reconstruction I will restrict myself to the first and the last aim, which can easily be shown to be linked in Hegel’s system: by revealing the boundaries that a subject who regards himself as entirely determined by morality will encounter in the process of realizing his freedom, Hegel believes that he has also given us the reasons that can persuade us of the necessity of the transition to the sphere of ethical life.

The best point of entry into what Hegel calls the “moral standpoint” is supplied by a comparison with the model of freedom as defined by law. As we have seen, this notion restricts the conditions of individual freedom to the entitlement to do, in accordance with our own interests, what is not forbidden by law; in other words, in order to realize our own freedom, we need nothing more than a bundle of subjective rights placing a multiplicity of possible options at our disposal. Hegel’s objection to this model was not only that it conceptually opened up the possibility of using the freedom of the other as a means of one’s own; what he objected to above all else was that this idea made what was regarded as the object of a free action in any given case totally irrelevant to the concept of individual freedom. It is this major deficiency that Hegel cites as his decisive reason for turning to the moral standpoint; for here, in the idea of moral autonomy, individual freedom is explored from precisely the opposite side, by regarding as a free action only something that is the result of rational self-determination.

It is with this idea of moral autonomy, Hegel is convinced, that individual freedom first reveals that dimension which touches on the relationship of the subject with himself; that is why, right at the beginning of the “Morality” section, we read in the Addition to § 106: “With right in the strict sense, it made no difference what my principle or intention was. This

question of the self-determination and motive of the will and of its purpose now arises in connection with morality.” The sphere of morality, Hegel wants to say, reveals, through a shift of perspective toward the inside, that we must always understand freedom, among other things, as a specific form of self-relation: only where a subject really reflects on how he is to act can we actually begin to speak of individual freedom. Here, essentially, Hegel has already outlined what he will subsequently see as the value of moral autonomy within the process of individual self-realization as a whole. This sphere comprises the attitude of reflective scrutiny that every subject must learn to assume toward himself if he is to comprehend his own activities and interactions as an expression of freedom; to that extent the conditions of individual self-realization include the right, now again understood in the wider sense, to make our assent to social practices conditional on the results of a rational scrutiny of their reasons. Naturally, the consequence of this requirement is that Hegel will carry out all his further reflections under the assumption that in principle they can receive the rational assent of any member of a modern society; but for him this turns out to be nothing more than making explicit the presuppositions contained in his concept of “objective spirit” right from the start.

If these few words have summarized Hegel’s reasons for granting the moral sphere a value, or a right to exist, they have said nothing so far about all the conditions of individual freedom. It is that question Hegel tries to answer with his famous critique of Kant, in which he tries to determine the limits of the moral standpoint.¹¹ Our author approaches his topic by gradu-

¹¹From the wide range of secondary literature I will again name only those texts that were most helpful to me in my attempt to find a solution of my own: Allen Wood, “The Emptiness of the Moral Will,” *The Monist* 72, no. 3 (1989): 454–83; Sally Sedgwick, “Hegel’s Critique of the Subjective Idealism of Kant’s Ethics,” *Journal of the History of Philosophy* 26, no. 1 (1933): 89–105; Andreas Wildt, *Autonomie und Anerkennung* (Stuttgart, 1982), chap. 1. It seems important to me to see the parallel between Hegel’s critique of the mentalist residue of Kant’s theory of knowledge and his critique of morality: Hegel seems to me to be arguing that in both cases Kant disregards the fact that subject and object,

ally expanding the concept of intentional action to the point where the categorical imperative appears as a motive; at this level an action is considered free only if it is the result of an application of the principle of universalization. Of the many formulae that sum up Hegel's objection to such a version of individual freedom, only one seems to me to be worth considering, or indeed true: it is the objection to context-blindness, which must, however, be given a special twist if we are to understand the transitional value of the argument properly. As is well known, Hegel's objection to the idea of moral autonomy is that it does not help us in reconstructing how a subject will ever come to act rationally; for in trying to apply the categorical imperative, the subject will remain disoriented and "empty" so long as he does not resort to certain normative guidelines drawn from the institutionalized practices of his environment, which provide him with the most basic information about what may be regarded as a "good" reason in any given situation. Hegel substantially overloads this objection by concluding that the categorical imperative may permit quite different actions in different social contexts; nor does he seem to take sufficient account of the fact that Kant considered the application of his moral principle as necessary only where moral conflicts were already present, that is, in cases in which a question arose about the legitimacy of some course of action that had already been envisaged. But even the question as to what is to be considered in any one case as a *moral* conflict or a *practical* challenge refers indirectly to the point that Hegel probably has in mind in his critique. So long as we fail to take into account that we are always moving in a social environment, in which moral considerations and points of view are already institutionalized, any application of the categorical imperative, to some extent, remains unsuccessful or empty; if, on the other hand, we accept the fact

duty and inclination were already synthesised in practically created media that must be understood as rational contexts of both our cognitive worldview and our moral relation to society. Hints pointing in this direction are also found in Jürgen Habermas, "Wege der Detranszentalisierung: Von Kant zu Hegel und zurück," *Wahrheit und Rechtfertigung: Philosophische Aufsätze* (Frankfurt, 1999), 186–229; *Truth and Justification* (Cambridge, MA, 2003).

that our social environment always predetermines the parameters of moral deliberation, the categorical imperative loses its justificatory function.

Up to this point Hegel's objection does not contain a single argument that could defend it against the charge of moral relativism; he fills that gap the moment he supplements his indictment of context-blindness with the statement that the normative guidelines of institutionalized practice must in their turn be reasonable and rational facts. This second part of the argument has a transitional character in the sense that it points ahead to the closing section of the *Philosophy of Right*; for Hegel suggests that we apply the term *ethical life* to precisely those normative guidelines of our institutional lives that have proved reasonable. However, it is important to separate those two elements of his objection to Kant's idea of moral autonomy although he always mentions them in the same breath; while the accusation of context-blindness, which casts doubt on the possibility of applying the categorical imperative free of any norm, belongs to moral theory in the narrow sense, the suggestion that we understand social reality as the embodiment of reason is, basically, an argument that belongs to epistemology, or rather, social ontology. But before I can move on to characterize the sphere of ethical life, I must briefly demonstrate how Hegel combines his critique of moral autonomy with the diagnosis of a social pathology.

As we have seen, Hegel in no way believes that the decision to adopt the moral stance is wrong in every case; rather, he accepts without any reservation that it is advisable to rely on one's conscience alone whenever there are sufficiently good reasons to question the rationality of institutionalized practices. Therefore he must be prepared for the possibility of a subject coming to a halt in his "ethical" everyday life because the normative guidelines of his social environment no longer seem to offer any guarantee of being rational in the sense that their underlying principles can be generalized. At such a moment of crisis the only way that remains to realize one's own freedom is to distance oneself from all existing norms and, as it were, to bracket them in their social validity:

In the shapes which it more commonly assumes in history . . . the tendency to look inwards into the self and to know and determine from within the self what is right and good appears in epochs when what is recognized as right and good in actuality and custom is unable to satisfy the better will. When the existing world of freedom has become unfaithful to the better will, this will no longer finds itself in the duties recognized in this world and must seek to recover in ideal inwardness alone that harmony which it has lost in actuality. (§ 138)

But in normal social circumstances, which Hegel believes prevail in modern societies in general, he does not accept the special assumption that the institutionalized practices and norms are devoid of any embodiment of reason; on the contrary, we must assume that our norms and values have absorbed enough rationality to be regarded as a social context whose moral guidelines we must generally consider to be beyond doubt.¹² For Hegel, then, the assumption of the moral point of view is accompanied in such circumstances by the tendency of losing oneself in a bottomless pit of self-questioning, from which, in the absence of accepted norms or obligations, there is no escape; moral reflection runs dry, so to speak, if it does not understand that the applicability of the principle of universalization depends on having confidence in the rational validity of a number of normative guidelines; and in such cases the threshold of social pathology is crossed as soon as the moral point of view is not merely adopted in some particular case of conflict, doubt, or confusion but is systematically detached from the social context which gives it meaning and treated as a fully independent and originary source of authoritative guidance. This is bound

¹²Naturally, this offers the possibility of interpreting Hegel's normative idea of "ethical life" according to the concept of "second nature" as developed in recent years by John McDowell: ethical life is the outcome of a process of education through which a second nature has developed in our attitudes, traditions, even perceptions, which represents an "embodiment" of reason. Cf., e.g., John McDowell, *Mind and World* (Cambridge, MA, 1996), chap. 6, and "Two Sorts of Naturalism," *Mind, Value and Reality* (Cambridge, MA, 1998), 167–97.

to lead to the extinction of all practical intentions and thus to an inability to act. Hegel saw the “suffering from indeterminacy” that marks a border crossing of this kind as so decisive a characteristic of his own epoch that he traced two other cultural phenomena back to it: in romantic individualism the inner emptiness and inactivity caused by the detachment and isolation of the moral standpoint from the rest of ethical life are compensated for by a return of the individual to the voice of his own nature; and since this exclusive orientation toward our own inner moods and emotional states is bound merely to lead us deeper and deeper into a process of infinite self-reflection, we will finally seek support from the traditional spiritual forces of a precritical religion: “A longing may therefore arise for an objective condition, a condition in which the human being gladly debases himself to servitude and total subjection simply in order to escape the torment of vacuity and negativity. If many Protestants have recently gone over to the Catholic Church, they have done so because they found that their inner life was impoverished, and they reached out for a fixed point, a support, an authority, even if what they gained was not exactly the stability of thought” (§ 141 Addition).¹³

“LIBERATION” FROM SUFFERING: THE THERAPEUTIC SIGNIFICANCE OF “ETHICAL LIFE”

It is the last-named consequences of the detachment of morality from its context that lead Hegel to the astonishing statement that the transition to ethical life must be experienced by the individual subject as a “liberation.” In the context of § 149, where this expression occurs for the first time, it means only the overcoming of a condition that is experienced as limiting and burdensome, namely that condition that results from the

¹³A convincing reconstruction of Hegel’s diagnosis of “romantic individualism” has now been presented by Undine Eberlein in her doctoral dissertation, *Das romantische Individualitätskonzept der Moderne* (Diss., FU Berlin, 1998), esp. 53.

futility of moral self-reflection; as soon as we realize that we are surrounded by social circumstances that have their own normative standing, these circumstances that comprise duties and rights, in short, moral rules, we are liberated from the excruciating emptiness we have been led into by the isolation and detachment of the moral standpoint. Accordingly, the paragraph says, not without pathos: “The individual, however, finds his liberation in duty. On the one hand, he is liberated from his dependence on mere natural drives, and from the burden he labours under as a particular subject in his moral reflections on obligation and desire; and on the other hand, he is liberated from that indeterminate subjectivity which does not attain existence or the objective determinacy of action, but remains within itself and has no actuality” (§ 149). But, for Hegel, the concept of “liberation,” which is found at many points of the transition to ethical life, is not exhausted by this one meaning with the essential connotations of being relieved of a negative and oppressive situation; rather, he goes beyond the merely subjective aspect by adding the further assertion that a state of real freedom is possible only as the result of such relief. In the next sentence he writes: “In duty, the individual liberates himself so as to attain substantial freedom” (§ 149).¹⁴

The term *liberation*, thus, has a double meaning: it refers *both* to a negative state of release from two extremely one-sided perspectives that limit freedom (and the relief agents feel when this has occurred) *and* to the positive process in which agents turn to and adopt a life of real freedom (ethical life). Here we can for the first time recognize the full extent of the therapeutic

¹⁴For a further analysis of Hegel’s idea that acceptance of the duties prescribed by “ethics” must be understood as “liberation,” see Adriaan Th. Peperzak, “Hegels Pflichten- und Tugendlehre,” in *Grundlinien der Philosophie des Rechts (Klassiker Auslegen*, vol. 9), ed. Ludwig Siep (Berlin, 1997), 167–91. In my view we miss the crucial point of Hegel’s concept of ethical life if we interpret the transition from the moral standpoint to the ethical sphere merely as “relief” in the sense of a liberation from demands for reflection, as Jürgen Habermas tends to do in his reconstruction: see Habermas, “Wege der Detranszendentalisierung,” esp. pp. 38.

function that Hegel tries to ascribe to his ethical theory.¹⁵ In the *Philosophy of Right* Hegel develops a procedure with respect to modern conceptions of freedom which we might call “therapy” because of its similarity to the philosophical “therapy” which Wittgenstein envisaged during the later part of his life: starting with the observation of a certain form of suffering—a “dis-ease”—in social life, he works through the implications of a certain diagnostic suspicion, namely that this “dis-ease” is the result of a deficient perspective, the deficiency of which is partly rooted in philosophical confusions. Hegel then recommends as therapy a change of perspective consisting in the recovery of familiarity with the rational content of our practice of living.¹⁶ It may be sensible to recall the individual steps in Hegel’s reasoning in order to arrive at a better understanding of his real intention. If we take the formal pattern of a therapeutic conception of philosophy as our base, the factual starting point of the *Philosophy of Right* is not simply the intention to design an alternative theory of justice, but the perception of a deficiency or “suffering” in the lifeworld of Hegel’s own time; to describe this prephilosophical suffering, he uses, in the first two sections of the *Philosophy of Right*, a multitude of quasi-psychological terms, all of which refer to states of apathy or lack of fulfillment. The philosophically decisive step consists in the diagnosis tracing the different phenomena of social suffering back to a conceptual confusion that, so to speak, has to feature as the cause of the illness; it is here, precisely at the point of transition to the second phase of the therapy, that we find Wittgenstein’s famous phrase about the “picture” that “held us captive.”¹⁷

But that is also the point where Hegel builds a bridge to the topic of the *Philosophy of Right*; for in his view the “picture that

¹⁵ My thanks are due to Andrei Denejkine for his advice in connection with the idea of a therapeutic function of Hegel’s ethical teaching.

¹⁶ For the therapeutic conception of Wittgenstein’s late philosophy, see P.M.S. Hacker, *Wittgenstein im Kontext der analytischen Philosophie* (Frankfurt, 1997); *Wittgenstein’s Place in Twentieth-Century Analytic Philosophy* (Oxford 1996), chap. 5, sect. 3.

¹⁷ Ludwig Wittgenstein, *Philosophische Untersuchungen* (Frankfurt, 1967), 67 (§ 115): “A picture held us captive.”

holds us captive,” in other words the conceptual confusion that is responsible for the suffering of his time, is made up of those two seminal understandings of freedom, as “abstract right” and as “morality,” whose inadequacies he already began to criticize in his Introduction. Here the word *inadequate* must not be understood merely in the sense of a cognitive error, which would make us lose sight of the fact that the conceptual confusion must be more than just a wrong statement; in order to be able to “hold us captive,” indeed to cause social suffering, the deficient conception must have become the foundation of practical attitudes in life, as it were, behind our backs. Therefore Hegel, quite consistently, treats the two deficient conceptions of freedom as forms of the objective spirit, which means, in his own terminology, that they not only represent a subjective conviction or a philosophical statement, but have become a perspective shared by the social actors and leading to effective action. Faced with such attitudes, in case they are deficient and therefore capable of causing social pathologies, more than mere criticism by way of therapeutic refutation is needed; rather, the only thing that can help here is the third step in the procedure I have indicated, that is, a constructive therapeutic critique that stimulates a liberating self-reflection.

This has brought us to the decisive point where the transition to “ethical life” occurs in Hegel’s text; and to show that we are dealing with a theoretically induced act of emancipation, we could hardly find a better word than *liberation*, which will recur regularly from now on. As we have seen, in the first two sections of his book Hegel wanted to show that the conceptions of freedom in terms of “abstract right” or “morality,” while not false or deficient as such, could become problematic and thus cause social suffering if they were singled out to represent independent ideas of practical life. So long as the social actors are guided in their own actions one-sidedly by either of the two ideas of freedom, they will not only be incapable of realizing their autonomy, but must furthermore remain, in one way or another, imprisoned in a painful condition of unfulfillment and indeterminacy. But since these one-sided interpretations of freedom are unrecognized prerequisites of a living practice,

Hegel cannot simply follow a course of theoretical refutation; clear-sighted enough to acknowledge the persistence of errors in practical life, he presents the transition to “ethical life” rather as the offer of an explanation, which is supposed to bring about a “liberation” from the pathological attitudes if it is properly appropriated. Thus the insight that the modern lifeworld contains a whole spectrum of interactional patterns guaranteeing freedom, which should jointly be called “ethical life,” is connected in a precise sense with a therapeutic function: the moment readers accept the offer of an interpretation of their lifeworld as an instance of “ethical life,” they should liberate themselves from the deceptive attitudes that have so far prevented them from realizing their freedom.

However, the real point of Hegel’s procedure does not become clear until he talks about “liberation” not only in the negative sense of an emancipation from unrecognized dependencies but also in the positive sense of an “acquisition of affirmative freedom” (§ 149, *Addition*). The transition to “ethical life,” concurrently with the overcoming of the pathological attitudes, must also help to bring about an insight into the communicative conditions that form the prerequisite for all subjects equally to attain the realization of their autonomy; for it is only when those concerned realize that they have been guided by one-sided, and therefore inadequate ideas of freedom, that they will be able to recognize those forms of interaction in their own lifeworld in which they must participate as a necessary prerequisite of their individual freedom. Therefore the insight, based on the theory of justice, that in modern societies all subjects should be given the chance to participate in such spheres of interaction is tied to a preceding emancipation from a failed process of education: without the liberating insight that they are suffering from “indeterminacy” because they have unknowingly accepted one-sided ideas of freedom in their practical lives, the subjects would be unable to access the concept of justice, based on the theory of intersubjectivity, which is inherent in the idea of a modern “ethical life.” In this process the first, therapeutic insight is supposed somehow to give rise to the second insight, which involves the theory of justice, and indeed

both are supposed to occur jointly at the point of transition to “ethical life,” subject to the kind of reconstruction Hegel offers his readers as a therapy: he reconstructs the misdirected process of education in question, showing that it results in a repression of a prior existing form of intersubjectivity. This repression is shown to be the reason the social actors came to form their one-sided ideas about freedom. Liberation from this pathology, then, means turning toward a conception of justice understood in terms of a theory of intersubjectivity. In other words, the therapeutic analysis has immediate consequences for the conception of justice, because overcoming social pathologies and seeing through false convictions are the first critical steps toward acquiring the prerequisites of communication and thus an insight into the necessary conditions of freedom. It must be noted that these reflections, which bring together the diagnosis of an age and the theory of justice, the history of consciousness, and the “philosophy of right,” systematically ratchet the demands on Hegel’s ethical theory yet another decisive notch higher: the social spheres of the ethical life that are presented here must be able to achieve both a lasting liberation from the phenomena of suffering described above and at the same time the possibility of what may be called the “just” individual self-realization of all subjects.

III

The Theory of Ethical Life as a Normative Theory of Modernity

As my analysis so far has shown, it is often some rather inconspicuous, everyday expressions that acquire central importance in my attempt to reactualize Hegel's *Philosophy of Right*. An important part may be played in this respect by the fact that, in contrast to interpretations based on close reading of the text, I intend to present Hegel's political theory as a theory of justice that has great persuasive power even though, or perhaps precisely because, it does not depend on any argumentative backing by his logic. Given this intention, the logical key concepts—taken from the logic of being, the logic of essence, or the logic of concept—fade into the background, as if of their own accord, giving way to those categories with which Hegel tried to explain his efforts to less experienced readers. A first concept of this kind, which occurs more often in the additions and commentaries of the *Philosophy of Right* than in the main body, is “suffering,” used in the sense of either a collective state or an individual condition; causally connected by Hegel with phenomena of indeterminacy, emptiness, or lack of fulfilment, it stands as a collective concept for the pathological damage to the lifeworld that an orientation by one-sided, incomplete models of freedom is supposed to be capable of causing. In a complementary relation to the concept of “suffering” we find the second category to which I attributed a central value in my interpretation, even though it has played a subordinate role

throughout the history of the interpretation of Hegel's book: "liberation." The reason why a process of "liberation" is referred to so many times in the transition to the section entitled "Ethical Life" is that Hegel wants to advance two theses at once and to suggest that on entering the new sphere, two things are possible: relief from the existing suffering and turning in the direction of actual freedom. In no other concept of the *Philosophy of Right* does Hegel's intention to provide a diagnosis of his age touch so immediately and so directly on his concern with the theory of justice as in that of "liberation": "ethical life" frees us from social pathology by creating for all members of society equal conditions for the realization of freedom.

SELF-REALIZATION AND RECOGNITION: CONDITIONS OF "ETHICAL LIFE"

The double meaning of the concept of "liberation," which embraces both the negative and the positive understanding of freedom, throws a first light on the manifold tasks the sphere of ethics, in Hegel's view, must be able to fulfill. The internal relation of the diagnosis of the suffering and the theory of justice produces a first minimal condition that must be satisfied by the ethical sphere: it can relieve us of the "suffering from indeterminacy" or lack of fulfillment only by supplying generally accessible opportunities of individual fulfillment or self-realization, which every subject should be able to experience as a practical realization of his freedom; to that extent the ethical sphere, regardless of what else it may be destined for, must offer a certain number of possible ways of life that can plausibly be regarded as the objects of aspiration for agents seeking full self-realization. But this criterion does not begin to exhaust the whole range of qualities the ethical sphere must possess, as we can make out from what has been said so far; and it is probably sensible to clarify these further criteria, which have already been discussed implicitly, before we can reconstruct and assess Hegel's procedure in the central section of his book.

The conceptual framework of all those criteria that need to be explained here is naturally provided by an idea that had already been elaborated in Hegel's Introduction and then tacitly accompanied his demonstration of the insufficiency of the first two spheres of freedom as a normative background. If the realization of individual freedom is bound to the condition of interaction, because the subjects, in their limitation, are able to experience themselves as free only when faced with a human opposite, it follows that the entire sphere of ethical life must consist of intersubjective practices and relations; the opportunities of individual self-realization that this sphere has to provide as a remedy for the suffering from indeterminacy must, so to speak, be made up of forms of communication in which the subjects can mutually see each other as constituting a condition of their own freedom. That is why the second condition that ethical life must satisfy according to Hegel is the intersubjective character of the patterns of actions constituting it. Even though Hegel has not devoted one explanatory word to it so far, in the transition to the section on "Ethical Life" he seems to take it as a matter of course that the only appropriate designation for such forms of intersubjectivity is "recognition"; at this point in the *Philosophy of Right* he falls back once more on some fundamental assumptions of the writings of his Jena period, where he used the term he had borrowed from Fichte to discern in the social patterns of reciprocal confirmation the necessary prerequisites of the human consciousness of freedom.¹ In the new context Hegel adopts this central intuition, but he amplifies it with further semantic components arising from the specific concern of his theory of "ethical life." To begin with, here as before, "recognition" means an effortless mutual acknowledgement of certain aspects of the other's personality, connected to the prevailing mode of social interaction. About this general

¹For this conceptual genesis, see Ludwig Siep, *Anerkennung als Prinzip der praktischen Philosophie. Untersuchungen zu Hegels Jenaer Philosophie des Geistes* (Freiburg, 1979); Andreas Wildt, *Autonomie und Anerkennung. Hegels Moralitätspolitik im Lichte seiner Fichte-Rezeption* (Stuttgart, 1982); Axel Honneth, *Kampf um Anerkennung* (Frankfurt, 1992); Robert R. Williams, *Recognition: Fichte and Hegel on the Other* (Albany, NY, 1992).

form of recognition Hegel will say in his *Encyclopaedia* of 1830 that the individual proves “worthy” of it “if he behaves towards others in a generally valid manner, recognising them as what he would like to be regarded as himself.”² The term *behave*, as used here, makes something clear that Hegel tries to emphasise further by the term *treat*: mutual recognition means not only meeting each other in a certain affirmative attitude but implies, also and indeed above all else, treating the other in the way that the relevant form of recognition morally demands.

It is this practical, behavioral side of recognition that Hegel now tries to bring out in the *Philosophy of Right* much more strongly than in his early writings in order to prepare the ground for introducing a further criterion that the sphere of ethical life must fulfill. The fact that reciprocal recognition has a behavioral dimension, and that it implies a certain form of intersubjective treatment, does not mean that it is a special, free-standing type of action; rather, Hegel seems to assume that it is more like an extra dimension that certain actions have. Certain actions, that is, have recognition built into their character as the subjects engaged in them relate to each other in such a way as to express a specific form of recognition.³ It is this ability on the part of some types of social action to express intersubjective attitudes of recognition that allows Hegel to describe the entire sphere of ethical life as a staggered arrangement of different forms of recognition; what he means is that the ethical sphere contains different classes of actions that are distinct in themselves but are all marked by the common quality of being able to articulate a certain form of reciprocal recognition. The third condition, then, that ethical life has to satisfy, as Hegel sees it, is that the intersubjective actions that constitute it should

²G.F.W. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundsätze*, part III: *Theorie—Werkausgabe* in 20 Bdn, ed. Eva Moldenhauer, vol. 10 (Frankfurt, 1970), § 432. Addition.

³For this expressionistic component of Hegel’s concept of action, see Taylor, “Hegel and the Philosophy of Action,” in *Hegel’s Philosophy of Action*, ed. L. S. Stepelevich and David Lamb (Atlantic Highlands, NJ, 1983), 1–18; I owe the idea that in Hegel actions or practices can express “recognition” to Alan Patten, *Hegel’s Idea of Freedom* (Oxford, 1999), 129.

express certain forms of reciprocal recognition. Incidentally, this already shows the outline of Hegel's attempt to continue the action-theoretical line of his argument in the section on ethical life by underlining the expressive component as a further element in completing an appropriate concept of action; on this road we come closer and closer to a model of social activity that is complex enough to explain the basic processes of social integration in modern society in their entirety.

But even given this last condition—that intersubjective actions must be able to express attitudes of recognition—we have not reached all the conclusions concerning the qualities of ethical life that can already be found as indirect references in the first two parts of the *Philosophy of Right*. Therefore Hegel's announcement that in the section on “ethical life” it will become clear how far “duties” may have a liberating effect and, what is more, that he intends to develop a whole “ethical theory of duties” (§ 148), supplies the key to the definition of a further criterion. So far we have seen that the sphere of ethical life is supposed to comprise a set of intersubjective actions in which the subjects can find individual fulfillment and reciprocal recognition at one and the same time; as the link between the two elements we must presumably imagine that both are forms of social interaction in which a subject can achieve self-realization only by expressing, in a certain way, recognition of another.

In the next step, with the help of the concept of “duty,” Hegel intends to develop further those qualities that an intersubjective action must possess in order to be able to express recognition in reciprocal fashion. We can see the connection as soon as we reconstruct the conceptual shifts Hegel applies to the Kantian idea of “duty”: while, as § 148 has it, in Kant “duty” is an “empty principle of moral subjectivity,” here, in the *Philosophy of Right*, the “ethical requirements” are expected to “turn out to be necessary relationships”; this, Hegel continues, makes it unnecessary to add to each ethical command that “this determination is therefore a duty for human beings.” If, for the time being, “ethical requirements” are understood to mean moral commands, this objection amounts to the idea that

the sphere of ethical life, which is yet to be portrayed, contains such commands as “necessary conditions”; and since we have already seen that those conditions must essentially be thought of as patterns of intersubjective action, it finally follows that moral commands (or duties) must be imagined as internal components of the corresponding patterns of action. In order to avoid any echoes of Kant’s idea of duty, Hegel would logically have to say that the action in question represented a type of social interaction in which the subjects mutually observed certain norms but did not perceive them as duties; rather, such an action means behaving toward the other so as to make the fulfillment of certain moral commands appear completely natural or self-evident. Translated into the terminology of the theory of action, which Hegel has in mind, it is possible to talk about a form of social action whose qualities cannot be described without referring to certain moral norms; or, to put it differently, such actions can be carried out only on condition that certain norms are felt to be binding.

After this conclusion it is no longer difficult to see the internal connection between the ethical “theory of duties” in the *Philosophy of Right* and the concept of recognition developed earlier. Essentially, the idea of duty that Hegel develops in his critique of Kant further restricts the forms of intersubjective action that are to be presumed to be capable of expressing reciprocal recognition. Only through an action that conforms to certain moral norms is a subject able to demonstrate recognition of another, because this demonstration is determined by precisely those moral considerations that are established through the corresponding norms of action. Thus, for Hegel, duty does not represent the detached and isolated point of view that Kant tried to establish as providing the decisive criterion for choosing between alternative courses of action, while remaining elevated above both alternatives, but only the internal, “necessary” component of any action that can be an expression of recognition; and developing an “ethical theory of duty,” accordingly, means delivering a systematic survey of those forms of intersubjective action that can demonstrate recognition thanks to their moral quality.

If we include among these requirements the earlier reflection about the necessity of making self-realization possible, we obtain a relatively complete picture of the prerequisites the sphere of ethical life must be able to satisfy. Hegel seems convinced that we can talk about ethical structures or ethical living conditions only where at least the following conditions are met: there must be patterns of intersubjective practice that subjects can follow in order to realize themselves by relating to each other in such a way as to express recognition through the way in which they take account of each other morally. At this point only one more step is needed to complete the imaginary model that we need in order to obtain an overview of Hegel's intention in drafting his ethical theory as a whole. Here too our progress is assisted by remembering a problem that I have had to leave open in my reconstruction so far, because I lacked the means to solve it. We already saw in the Introduction that Hegel tries to understand the realization of individual freedom as an intersubjective process because it is only in relation to other subjects that a human being restricts himself to inclinations and needs, the realization of which he can experience as a "being-with-oneself"; only the pursuit of such "first-order volitions" positively related to fellow-humans is free of causal coercion, or heteronomy, since it may become an expression of its own freedom if it receives a response from the other.

But this magnificent train of thought, which is naturally hidden behind Hegel's constant emphasis on intersubjective activity in the section on "ethical life," supplies no answer to the question how such a "restriction" of inclinations can occur if it is not to be pictured as the result of a rational decision; for Hegel rejected that solution, when in his Introduction he accused Kant and Fichte of considering the needs merely as the "given" material for moral examinations and thus keeping them as heteronomies. In contrast, Hegel advocates a form of "restraint" in which the natural potential of human inclinations is itself subjected to a process of formation, or socialization, so that it loses the character of something merely given; the array of potential needs, that is, nature in man, must not be thought of as something fixed forever, but rather as something plastic

that offers scope for focused changes. Only at one point, where he mentions the concept of “culture” in his Introduction, does Hegel give a hint of the concept by which he will resolve this problem in the section on “ethical life.” Unlike Kant or Fichte, he assumes that the structure of motivation in man is always the result of educative processes that are able to exert enough influence to allow the needs and inclinations of the moment to be penetrated by rational commands; and to that extent the process of “restriction,” that is, the direction of instinctual potential toward intersubjective needs, must be represented as a supraindividual process that modern society is able to repeat in itself regularly in the shape of “culture.” We shall see how Hegel expands this idea in his section about “ethical life” by trying to define the whole of the ethical sphere as a social world of “second nature.”

But at this point we can already see the consequences of the idea of “culture” for the categorial conditions Hegel is obliged to consider in his draft of ethical life. If we have so far found that the network of intersubjective practices that is supposed to constitute the ethical sphere must be able to fulfill the conditions of both individual self-realization and reciprocal recognition, now a further, and last, command comes to light: because the relevant patterns of action have always involved a fusion of inclinations and duties, needs and commandments, in order to be able to yield morally valuable practices, they must always have the ability to generate such a fusion if they are to be able to reproduce themselves. But after what has been said, this can only mean that the intersubjective practices in question are able to initiate processes of education that produce, for their part, the practical habits that constitute the foundations of the ethical life. Accordingly, it may be said that Hegel has to equip the ethical sphere of action with the ability to produce afresh in every generation the behavioral dispositions that motivate the individual to take part in the corresponding practices; therefore, in his ethical theory, he is obliged also to outline a kind of epistemological theory, since education can only be described as becoming familiar through practice with a complete horizon of implicit rules corresponding to a network of skills and

achievements.⁴ Thus, this last point amounts, on the whole, to the difficult task of showing that the ethical spheres of interaction contain autonomous learning processes capable of developing the corresponding behavioral dispositions.

The last-named criterion has brought us to the point where we can take an overview of all the claims Hegel attaches to his section about “ethical life.” If we are to list the conditions in brief key phrases, the sphere of ethical life must consist of interactional practices that are able to guarantee individual self-realization, reciprocal recognition, and the corresponding processes of education; and the three aims must be closely interwoven, since Hegel seems convinced that their relationship is one of mutual conditioning. The fact that we were able to reconstruct these normative claims prior to any examination of the implementation of the theory must not lead us to assume that in what follows Hegel will proceed in the manner of moral constructivism; it is not the case that he first outlines a series of well-founded principles of justice and then asks himself what the social conditions of their realization must be like. He is precluded from such a procedure, right from the outset, by his own thesis, which he advances in opposition to Kant, that the social conditions of life generally contain enough justifiable moral norms to serve as a foundation for most of our judgments and decisions; and this thesis itself was the expression of his broader conviction that social reality should be spoken of only as “objective spirit” because it must be regarded as the result of the rational instantiation of generalizable reasons. That is why the procedure Hegel adopts in the third part of his *Philosophy of Right* to identify spheres of “ethical life” must not be understood as the construction of an ideal theory; rather, it can be understood correctly only if it is interpreted as a “social-theoretical” attempt to uncover, among the social conditions of modernity, precisely those spheres of action that seem to correspond to the criteria outlined indirectly above. To underline the difference from the constructivism of the Kantian tradition,

⁴This point of view is brilliantly developed by Paul Redding, *Hegel's Hermeneutics* (Ithaca, 1996), 191.

this procedure may perhaps be described as “normative reconstruction.” Led by the standards developed so far, the modern conditions of life are reconstructed in such a way as to reveal those patterns of interaction that can be regarded as indispensable prerequisites for the realization of the individual freedom of all members of society. To that extent it is also clear that, for Hegel, only part of what belongs to the social reality of modern societies falls under the normative title of “ethical life.”

However, the first fact that strikes the eye in the last section, entitled “Ethical Life,” is the renewed division of the argument into three chapters: “The Family,” “Civil Society,” and “The State,” in that order. In the unbiased reader this addition to Hegel’s notorious tripartitions must naturally awaken the suspicion that Hegel is simply applying the syllogistic approach of his *Logic* to the historical material only to reveal once more spirit’s method of operation; nor is the reason he gives in § 157 for the tripartition of the section likely to dispel this suspicion, since he talks only of an “objectivization” of spirit “through the form of its moments.” Therefore we shall have to examine whether Hegel has any objective reasons, independent of his *Logic*, that can justify his division of the ethical sphere into precisely those areas of action. The reconstruction of the arguments that lead Hegel to stress the institutional complexes of “the family,” “civil society,” and “the state” is relatively unproblematic: they reflect nothing other than an acute, almost sociological, awareness of the real differences between three spheres of action that jointly constitute the nucleus of modern society. Much greater difficulties are caused by the question why it is the interaction of precisely and exclusively these three spheres of action that is supposed to be able to guarantee the realization of the individual freedom of the subjects. What Hegel seems to assume here amounts to the uncommonly bold thesis that the central institutions of modern society represent the only areas of practice in which self-realization, recognition, and education work together in the requisite manner.

Before this comprehensive thesis can be examined as a whole, it is advisable to ascertain the reasons Hegel offers, apart from his *Logic*, for the ascending order of the three spheres. The

relationship between “the family,” “civil society,” and “the state” is not intended to be one of normative equality, but is hierarchical; the individual spheres are situated along a rising line, which can be scaled in accordance with a number of reasons that can be found in the *Philosophy of Right* and can stand without any reference to logical forms of inference. Thus Hegel justifies his use of “the family” as the starting point of his exposition by invoking the natural emotions that represent the medium through which the individual is included in society; in the Addition to § 158 he says tersely that the family is “ethical life in its natural form.” If we translate this phrase into more explicitly sociological terms, it expresses Hegel’s conviction that the family in its given form, the bourgeois nuclear family,⁵ is the place where the primary socialization of human needs is carried out. It is here that the intersubjective satisfaction of individual urges takes place in the form of sexual love between marriage partners, and it is here that the child’s as yet unstructured potential of needs is shaped for the first time through the educational practice of the parents. Therefore the family owes its position as the foundation of all ethical life to its closeness to the natural needs of man; without the intersubjective recognition, which the instincts attain in the interior of the family, the development of a “second nature,” of a socially shared fund of habits and attitudes, would be quite impossible.

If the fundamental role of the family in Hegel’s concept of “ethical life” is relatively easy to understand, the intermediate position of “civil society” creates considerably greater difficulties. Here too we must concentrate on those arguments of Hegel that have persuasive power without the support of the *Logic*; one particular problem arises from the fact that “civil society” is also described in the text as a “system of needs,” which seems to create a specific proximity to that side of human nature that has just been described as a characteristic of “the

⁵Cf. Siegfried Blasche’s instructive essay “Natürliche Sittlichkeit und bürgerliche Gesellschaft: Hegels Konstruktion der Familie als sittliche Intimität im entsittlichten Leben,” in *Materialien zu Hegels Rechtsphilosophie*, ed. Manfred Riedel (Frankfurt, 1974): 2:312–40.

family.” The difficulties begin to dissolve as soon as we take into account the importance Hegel attributed to the concept of “civil society” from an early point in his political thought. Ever since his years in Jena, based on an excellent knowledge of English economics, he had identified civil society with that area of the capitalist market that breaks the intersubjective tie between subjects through its competitive effects, but which, on the other hand, provides the best chances of realizing individual interests because in exchange it opens the access to a multitude of products.⁶ Thus Hegel saw “civil society,” understood as the market-mediated sphere of circulation between economic citizens, as the means of destroying the immediacy of ethical life and at the same time enabling supreme individuation; and with a certain flair for pointed rhetoric he characterized this Janus-faced role by the formula “tragedy in the ethical.”⁷ However, what follows from this with regard to our problem is that “system of needs” does not refer to a sphere of communication oriented towards need, but to the anonymous systemic control that enables the market to satisfy a multitude of interests; what human nature contributes to such exchange relations are those variously intensifiable needs that an adult can no longer expect to be satisfied by the family circle.

Given this interpretation, it is no longer so difficult to see the reason why “civil society” holds a superior place in the ethical sphere compared to “the family.” Hegel is guided by the idea that in market-mediated circulation the subject appears as an individual legal person, while in the interior space of the family he still exists only as a dependent member of a non-elected community. In other words, it is the higher degree of individualization, of chances to realize self-centered interests, that gives “civil society,” as seen by Hegel, a certain superiority

⁶For an exemplary discussion of this, see Manfred Riedel, “Hegels Begriff der bürgerlichen Gesellschaft und das Problem seines geschichtlichen Ursprungs,” *Materialien zu Hegels Rechtsphilosophie*, ed. Riedel, 2:247–75.

⁷He talks about a “tragedy in the ethical” with reference to “civil society” as early as in the essay “Über die wissenschaftlichen Behandlungsarten im Naturrecht,” written in Jena, in: *Theorie-Werkausgabe*, 2:434–530, current quotation 495.

in comparison to the communicative space of the family. In this higher sphere too a part of human nature expresses itself, insofar as it is the human needs that are reflected in the exchange process of the market; but this applies only to “private persons who have their own interest as their end” (§ 187) and not to those intersubjective needs family members mutually present to each other. Therefore it may be appropriate in the first instance to record, as the central difference between these two spheres, the difference that exists between the satisfaction of self-centered interests and that of intersubjective needs; in addition, this method begins to indicate in outline the differences between the two spheres in their way of interlacing recognition and self-realization.

Judged by the criterion that has thus proved to be the standard of comparison between the first two spheres, the priority of “the state” as opposed to “civil society” must again be due to its ability to help the subject achieve a higher degree of individuality. However, at this point of transition to the third sphere the line of the argument is blurred, because it is not always clear whether Hegel still has the subjects’ interest in freedom in mind; rather, the famous speech claiming that the citizens must be understood as accidents in relation to the substance of the state seems to declare that here the individual counts only in his role as a dependent member and that therefore his individuality has no real significance.

As a countermove to this tendency, to which we will return in more detail, the chapter on “the state” also offers reflections that agree with the sequence of steps sketched so far; such passages suggest that the reason why subjects are involved in the state to an even higher degree of their individuality is that there they are able to carry out a “universal activity” (§ 255, Addition). What that is supposed to mean is explained by Hegel most precisely in his observations on the “corporation,” even though these appear at the end of the chapter about “civil society” rather than in the chapter about “the state.” As he writes in § 254, the individual attains a public existence as a citizen endowed with reason in the same measure as he learns to restrict his “skills” and his abilities in a rational way by selflessly

subjecting his activities to the “common end”; the intersubjective approval he receives for this ability to lead a “public life” comes in the form of the award of prestige and “honor” by other members of society. Hegel leaves no doubt that in principle every member of society should have the opportunity to promote, through a regular occupation, the “less selfish end of this whole” (§ 253) and to receive “true recognition” for such “rectitude” (§ 253) in terms of honor; the state must grant not only membership in the corporation but also alternative opportunities that “provide ethical man with a universal activity in addition to his private end” (§ 255). Thus it is the collaboration on this “universal” work, the active participation in the reproduction of the community, that Hegel believes allows an even higher degree of individualization: the subject has become a member of society here, in the sphere of the state, neither through his natural need nor through his individual interest, but through his rationally formed talents and skills.

Before we see the ambiguities that afflict these definitions of “the state” in Hegel, we can easily provide a first résumé of our reflections so far. Hegel seems to imply a sequence of need, interest and honor, as he imagines the entire sphere of ethical life as being divided into three successive levels of “the family,” “civil society,” and “the state”; in each of the three partial spheres the subject undergoes an enhancement of his own personality in proportion to the degree of the rational transformation of an initially inchoate, natural individuality. The individual is a member of a “family” because he has needs that can be satisfied by love alone; in contrast, his membership of “civil society” is conditional on his ability to instrumentalize his own interests so that they can be indirectly satisfied by transactions on the capitalist labor and commodity market; and finally, the individual subject is a member of “the state” if he is able to develop his “skills,” dispositions, and talents so “reasonably” that they can be deployed for the universal good. As this proposed reconstruction shows, Hegel succeeds in distinguishing the three stages of individualization only by setting them in parallel to the corresponding forms of the cognitive relation to the world, so that he must understand the sphere of ethical

life as a whole as a drawn-out process of education: the subject reaches the highest level of individuality by learning, through participation in the different spheres, to master, step by step, the cognitive schemata and reasons that are situated, each in its turn, within the horizon of “feeling,” instrumental rationality, and reason. Thus the hierarchy of the three spheres of interaction is measured not only by the degree in which each sphere allows the social representation of individuality but also by the cognitive level of the language games played in each. However, it would probably be even more appropriate not to allow a gap to develop between these two dimensions, but rather to impute to Hegel the systematic thesis that a subject’s chances of individualization will grow in proportion to his capacity for generalizing his own orientations; in that case the sequence of need, interest and honor appears as a pattern of steps in which the process of individualization equals a gradual process of decentration. But, for Hegel, this decentration of the subject can meaningfully advance only as far as the boundary drawn by the general concerns of a concrete community; for he believes that the strict form of universalization that Kant envisioned in the categorical imperative is appropriate only to a special case in which a social lifeworld has lost all generalizable norms and practices.

With these last reflections we have advanced a long way into the theoretical territory that contains the problem in which we are really interested. So far my interpretation has only served to clarify what reasons apart from his system Hegel had for postulating a normative hierarchy of the three spheres of interaction that he regards as the core of all modern forms of ethical life; and the answer, as we saw, lay along the line of a systematic thesis, which assessed the relative position of the different spheres in relation to their ability to contribute to a rational, decentered form of subjectivity. But the core of all the questions raised by the section on “ethical life” naturally arises from Hegel’s uncommonly bold intention, which he pursues in his *Philosophy of Right*. Hegel tries to demonstrate that the three spheres he distinguishes make possible the realization of individual freedom and that in modern societies a threefold structure of the

kind he describes is the *only* way to ensure the full realization of human freedom. There is, under modern conditions, no alternative. Therefore, the problem to be solved first of all is not the hierarchy of the spheres among themselves but their suitability as the social embodiments of ethical life. The key for a first answer to this question is supplied by the reflections that we have just carried out in relation to the epistemological qualities of the various spheres; for it is from there that we can establish, step by step, the close connection Hegel sees between cognitive style, forms of recognition, and self-realization.

THE OVER-INSTITUTIONALIZATION OF “ETHICAL LIFE”: PROBLEMS OF THE HEGELIAN APPROACH

According to what has been argued so far, Hegel seems to be convinced that each of the three spheres he emphasizes as being normative is dominated by a certain type of cognition which, moreover, is intertwined with certain forms of subjectivity. It seems tempting to connect these cognitive styles, these ways of relating to the world, with the patterns of action that are supposed to characterize the different spheres; this is also supported by the fact that I spoke as a matter of course about “language games” in connection with the internal intertwining of levels of individuality and certain forms of cognition. The situation is again easiest to understand with regard to the social sphere that Hegel placed at the head of his normative reconstruction of “ethical life,” the bourgeois nuclear family. Here Hegel follows the growing tendency of his time to imagine the family as an intimized interior space free of external constraints, and he arrives in this way at the definitions with which we are already familiar.

Communication between family members, both between the spouses themselves and between the parents and children, serves to satisfy needs that are typical of man as a natural being; in that respect the individual appears as a member of a community whose external purpose is the support and protection of

all the individuals that belong to it. But Hegel is clear that these characterizations by no means explain why the family should be an ethical sphere; nor has he yet applied a single one of the criteria that must be satisfied if the normative term *ethical* is correctly to be used to characterize a form of action. That is why he hastens, in what is the real core of his chapter about “the family,” to list the various qualities that turn the modern family into an ethical sphere of interaction. As a starting point he uses a definition that makes the inner connection between action and cognition clear: the specific feature of the family, which makes it a “moment” of ethical life, is that the “natural” satisfaction of a need occurs in the form of reciprocal love, in other words, in an interaction that takes place in the “feeling” of a “unity of myself with another and of the other with me” (§ 158, Addition). In this form of action, knowing and doing, cognitive attitude and activity, are so hard to separate that the one can be explained only in relation to the other; to love another person means relating to them with the consciousness that without them “I would feel deficient and incomplete” (§ 158, Addition); and having such a consciousness, again, means treating the person one loves in a way marked by “trust” and “sharing” (§ 163). Thus love is a form of action that contains, in the form of “feelings,” a shared awareness that “we” without each other would be incomplete subjects and that therefore we belong together as a “union.”

Basically, this definition alone, which constitutes the substance of the first paragraph of the chapter on “the family,” contains all the criteria Hegel needs to declare the family a sphere of ethical life. It is obvious that here the condition earlier described as “education” is fulfilled: as Paul Redding correctly observed, the family, for Hegel, represents a “cognitive context” in which the participants learn what it means to see the other as an irreplaceable individual.⁸ The acquisition of an evaluative language of personal relationships is what Hegel regards as the primary task of the education of children: “As far as their relationship with the family is concerned, their upbringing has the positive determination that, in them, the ethical is

⁸Redding, *Hegel's Hermeneutics*, 191.

given the form of immediate feeling which is still without opposition, so that their early emotional life may be lived . . . in love, trust, and obedience" (§ 175). Incidentally, in the context of such reflections there are also remarks in Hegel that sound like an anticipation of the psychoanalytic theory of object relations—for example, when he talks about how breastfeeding will transform the child's sense of "unity with human beings into nature" (notes on § 175).

However, with regard to the question how far the "family" fulfills the criteria of an ethical sphere, a further consequence that Hegel draws from his definition of love carries much more weight. We saw that an ethical sphere is supposed to be determined, among other things, by a form of communication that is capable of displaying reciprocal recognition by virtue of its moral presumptions; and that as far as the content of these presumptions is concerned, Hegel had spoken of sphere-specific rights and duties that jointly express a certain way in which people take account of each other. It is easy to recognize that Hegel needs to expand his definition of the family only by one further element in order to arrive at the outlines of such a form of communication. If members of a family love each other—in the sense of each being aware that the other is irreplaceable—this must be reflected in types of behavior that have a moral character insofar as they imply a specific form of considerateness, a certain way in which they take account of each other; since one person is regarded as irreplaceable by another, this considerateness within the family can only consist in the mutual "support" (§ 164) required for the advancement of the uniqueness of an individual. It is in these practices of support, care, and fostering, all of which Hegel now seems to regard as being internally characterized by certain duties and rights, that a form of mutual recognition expresses itself. If, in our intersubjective actions, we follow the appropriate moral norms, we will recognize each other reciprocally as subjects of unique value to each other, because without the other we would feel "deficient and incomplete."

Naturally, this last remark contains the decisive indication of the reason why interaction within the family ultimately proves

to be one locus of individual self-realization in human society. Here Hegel's task is easy because all he needs to do is to pull together the threads of his analysis so far, in order to see communication within the family as a first stage in the achievement of freedom: if each family member feels "incomplete" without the other, it means, in positive terms, that in this kind of interaction the subject undergoes a process of self-perfection that helps him to "find [him]self in another person" (§ 158, *Addition*). It is the satisfaction of our urges through love, a reciprocal fulfillment of our wishes nourished by mutual inclination, that convinces Hegel that the family is a sphere of individual self-realization: we realize part of ourselves because the other effortlessly endorses those of our inclinations, impulses, and needs that are part of our natural equipment as "feeling" human creatures. And, as if to recall the therapeutic point of his entire ethics, Hegel once more emphasizes the formal structure of a "liberation" through "self-limitation" in his discussion of "marriage," the "objective origin" of which he describes as "the free consent of the persons concerned, and in particular their consent to constitute a single person and to give up their natural and individual personalities within this union. In this respect, their union is a self-limitation, but since they attain their substantial self-consciousness within it, it is in fact their liberation" (§ 162).

This remark closes the circle of our attempt to recover, in Hegel's analysis of the family, the criteria for his definition of an ethical sphere. All the necessary ingredients of such a sphere of communication that could be made out earlier recur here in the description of the pattern of interaction within the family. The family members achieve self-realization in their inclinations and needs if, and only if, they grant each other the kind of support and care that expresses a recognition of each other's irreplaceability; at the same time such a communicative relationship, in structural terms, contains the beginnings of an educational process, because the growing children must learn to master an evaluative language of personal relationships. A striking feature of this uncommonly dense, persuasive analysis is the amount of prejudice Hegel allowed to slip in about the

role of women in the family's division of labor; in § 166 we find a pathetically naive collection of all the powerful metaphors and characterizations that ensured for centuries that women, with their purportedly natural talents, were regarded as qualified solely to educate the children and keep house, while men were to have their "actual substantial life in the state, in learning, etc."⁹ However, if we ignore statements of this kind, which add a strongly patriarchal element to Hegel's picture of the family but which could essentially be eliminated by a few robust amendments, a second striking feature carries vastly more weight in the system; it strikes us as soon as we remember the great significance Hegel attached to "friendship" in the discussion of a truly free will in his Introduction. In the Addition to § 7, he wrote that "friendship," at the level of feeling, represented the exemplary case of a relationship that showed how a subject could reach complete freedom only through "limitation" to another subject; however, in the chapter on "the family," which is concerned with the plane of "feeling" (§ 166) within ethical life, "friendship" does not occur in the text at all, and the analysis of the realization of freedom is restricted to the interior of the bourgeois nuclear family. This discrepancy is resolved if we take a further step to see the reasons Hegel marshals in support of the privileging of legally institutionalized forms of ethical life.

At first sight, after what has been said so far, there seems to be hardly any objection to including in the first sphere of ethical life a further form of interaction that revolves, like the family, round the reciprocal recognition of the irreplaceability of the other: "friendship"; friends, too, always realize part of themselves by being guided in their interaction through moral norms of benevolence and support, which promote the development

⁹For a summary see J. P. Mills, "Hegel and the Woman Question," in *The Sexism of Social and Political Theory: Women and Reproduction from Plato to Nietzsche*, ed. L. Clark and L. Lange (Buffalo, 1979), 74–97; an attempt to update Hegel with regard to these questions was undertaken by T. Nicolacopoulos and G. Vassilacopoulos, *Hegel and the Logical Structure of Love* (Aldershot, UK, 1999).

and articulation of their own individual needs.¹⁰ It is no exaggeration to talk about a potential for cognitive education in friendship, since Jean Piaget's early investigations can be expanded to demonstrate that children acquire elementary categories of an impartial morality in games with friends of the same age;¹¹ it is no coincidence therefore that in recent years psycho-ethical studies have attributed to friendship a constitutive role in the development of the capacity for moral judgments.¹² Finally, the inclusion of friendship would also have offered Hegel the great advantage of not having to reduce the first sphere of ethical life to a single type of relationship; and the theory of justice he had in mind when he outlined the communicative basic goods would not have remained fixed too narrowly on the social circumstances of his own time but would have acquired a somewhat wider scope. However, none of these obvious reasons could induce Hegel to change his mind, even though he admired Aristotle all his life as a great theoretician of friendship; in the first twenty-three paragraphs of the section about the sphere of ethical life there is not one reference to friendship, and the text is restricted throughout to the discussion of the interactional form of the family.

Hegel offers two weighty reasons in the *Philosophy of Right* to justify this decision; while the first reason is connected with the entire construction of the book and therefore is not mentioned in the chapter on "the family," the second reason is developed only in that chapter because it is most closely linked to the action pattern called "love." In order to understand the first, general reason why Hegel restricts his discussion to the family, it is necessary to recall briefly the intention behind his theory of "ethical life" as a whole: as we saw, it was under this heading that he intended to place a normative emphasis on those interactive relationships, given by history, that could be understood

¹⁰See, e.g., Lawrence A. Blum, "Freundschaft als moralisches Phänomen," *Deutsche Zeitschrift für Philosophie* 45 (1997): 217–34.

¹¹Jean Piaget, *Das moralische Urteil beim Kind* (Frankfurt, 1937).

¹²See Monika Keller, "Moral und Beziehung: eine entwicklungspsychologische Perspektive," *Deutsche Zeitschrift für Philosophie* 45 (1997): 249–65.

as the “basic goods” of modern societies, which should be available for all subjects to dispose of or to participate in, in order to be able to realize their freedom. To be more precise, those interactional spheres regarded as basic goods had to exhibit specific qualities that could be reduced to a common denominator made up of self-realization, recognition, and education. From these premises Hegel seems to have drawn the conclusion that the only interactional relations in modern societies that can be understood as social elements of ethical life are those that fall under the organizational authority of the state and can therefore be institutionalized in terms of positive laws; for without such a possibility of state control the spheres in question would not possess the foundation of durability, reliability, and implementability that was necessary to make them a condition of freedom that was available to us and under our control. That is why the state, while representing only the third sphere of “ethical life,” is at the same time the organizational framework for the other two ethical interaction spheres; and, why of all the modern communicative relationships concerned with the reciprocity of inclination and love, only what has already been legally institutionalized can be admitted as part of ethical life: the family based on the marriage contract.

The case is made again, in more concrete form, in the chapter on “the family,” where Hegel discusses marriage as a relationship that is part of the ethical life. The starting point of this second explanation is the early romantic idea that marriage should be founded exclusively on the reciprocity of positive feelings and passions; against such an emotional model of marriage Hegel argues, as he already did in the context of his moral criticism against the idea of romantic subjectivity, that a relationship (whether with the self or by interaction with others) cannot achieve any stability or firmness if it is oriented merely on subjective emotions.

Accordingly, we read in the Addition to § 161: “A third and equally unacceptable notion is that which simply equates marriage with love; for love, as a feeling, is open in all respects to contingency, and this is a shape which the ethical may not assume. Marriage should therefore be defined more precisely

as rightfully ethical love, so that the transient, capricious, and purely subjective aspects of love are excluded from it." If we asked why "ethical life" may not have the "shape" of "contingency" Hegel's answer would probably be that without a positive legal framework it would be impossible to provide a condition of freedom that would be stable and guaranteed for all subjects; if it is to be possible to describe certain conditions of communication in modern societies as spheres of the realization of freedom, they must possess a social stability that goes beyond subjective motives and this can be guaranteed only through legal sanctions. Thus Hegel seems consistent in granting a place in his first sphere of ethical life only to that kind of love relationship that has assumed the form of a legal institution by means of the marriage contract and which is therefore elevated above "the heat of passion" (§ 162).

It is, nevertheless, surprising to see Hegel's insistence in both arguments on the necessity of positive legal institutionalization, even though he has already presented "ethical life" as a "second nature" and thus as something eminently stable. Action practices that are spared rapid change because they have assumed the form of intersubjectively shared routines and habits, that is, of "customs," can to some extent be understood as "institutions"; they may not be anchored in legal sanctions on the part of the state, but they have enough "firmness" and stability not to be permanently subject to the "caprice" of our feelings.¹³ Had Hegel been guided by such a concept of "institution," with which he was perfectly familiar through the concept of "custom," he would have been able to realize that the "substance" of the family consisted neither of a contract nor of merely subjective feelings but of habitual actions turned into routines; and such an approach would naturally have allowed him to include in the first sphere of "ethical life" the interactive pattern of "friendship," which, while not sanctioned by the state, represents a culturally established "institution" of social activity. The fact that Hegel does not take this road, but

¹³For such an anthropological introduction to the concept of institution, see Arnold Gehlen, *Urmensch und Spätkultur* (Frankfurt, 1964), part 2.

confines himself to the positive legal institution of the family, must therefore be connected to another aspect of the argument I have outlined; it may not be the stability, the “firmness,” of practical actions, but the extent to which they can be socially produced and generated through controllable interventions, that makes him cling to the idea of an ethical life embedded in the state. If this were true, his argument would have to be understood roughly as follows: since the different spheres of ethical life must be thought of as interactive social relations in which every subject can take an equal part for the sake of freedom, they must be imagined as public goods that can be controlled at any time by state legislation; for only if such state-intervention is possible can those ethical spheres be guaranteed to continue in existence and made accessible to all members of society without any restrictions. In the terminology we used earlier when introducing Hegel’s concept of right, the corresponding argument would be that the social right of existence can be suitably guaranteed for the different spheres of recognition only if it remains attached to the positive legislation of the state.

If this is the argument that guides Hegel in his reductionist version of the first sphere of ethical life, what he has actually done is to devalue some of the socially given conditions of freedom and demote them from this proper status as constituents of the ethical life. Hegel himself emphasizes time and again that the sphere of ethical life as a whole must be understood as the social embodiment of historically grown, rationally imprinted habits of action; therefore this core area of modern communicative conditions must neither be presented as too firm and unchangeable, because it would then lose all its peculiar and valuable plasticity, nor understood as mere raw material for state legislation, because it would then lose all the qualities of “custom,” that is, its rootedness in the development of habits that can never be completely regulated. Therefore, the sphere of ethical life should comprise those communicative relations produced in the process of social modernization that, on the one hand, have an institutional character in the sense that they represent habits with sufficiently robust associated motivations,

and on the other hand, are open to internal changes and new adaptations. In the case of such interactive spheres, which in other respects fulfill all the criteria developed by Hegel, we must expect them to enjoy a certain legal support from the system of laws established by the state, which creates an appropriate framework for them, but we must not make the mistake of totally identifying these interactive spheres with legally constituted institutions. Hegel does not make a sufficiently clear distinction between an ethical sphere that depends on appropriate legal conditions in order to flourish and an institution that owes its very existence to a contract sanctioned by the state; if he had made such a distinction, he would not have had to restrict his first sphere of ethical life to the one institution represented by the family based on the marriage contract, but he would have been able to keep it open for other varieties of personal relations. Perhaps it would have been more consistent with his intentions if he had not summed up his entire intuition of self-realization through reciprocal love in the image of a fully developed institution; the central idea alone would have been enough to describe the conditions of interaction in that first sphere on a more abstract level, rather than linking it exclusively to the bourgeois nuclear family in a manner that seems fairly antiquated today. What I have called “normative reconstruction” would, in these somewhat different circumstances, mean reconstructing in modernity not institutionalized givens of the legal system, but social spheres of value marked by the idea of a certain interplay of reciprocal recognition and individual self-realization. In other words, Hegel would have been able to imagine modern society also as a complex of spheres of recognition offering adequate space for various forms of social institutionalization.

With this reflection we have reached a point in our argument at which the first inferences are beginning to emerge with regard to the project as a whole. But before drawing such a résumé, I must examine, at least in a rough outline, the ethical considerations Hegel associates with the other two spheres of ethical life, “civil society” and “the state”; in so doing I can restrict myself to delineating the internal connection that is supposed to exist

in each case between self-realization, recognition, and education. The central intuition hiding behind Hegel's inclusion of "civil society" in ethical life had already become clear when I presented the reasons for the hierarchization of the three ethical spheres: in the "system of needs," that is, the exchange of work or goods mediated through the market, something is realized by the subjects that Hegel could have better described throughout his treatise as "interest" rather than "need"; for what is at stake here is precisely those human wishes, intentions, and desires that were developed, on the one hand, without any thought of the needs of any other partners involved in the interaction, and that, on the other hand, must be directed as a matter of principle to goods that can be acquired by economic means.¹⁴ From the outset, Hegel regarded civil society as the location of a merely indirect universality, and its inclusion in ethical life as a tribute that a social ethic must pay to the normative achievements of modernity: here uncommitted single subjects meet to conclude contracts about transactions which, if adhered to, provide them with individual means of mutually realizing interests where the interests of each one are of no further relevance to the other beyond the context of the transaction itself. If within the family every member was obliged to surrender part of his independence in order to achieve self-realization in the affective unity of a dyad or triad, in civil society each individual rigidly insists on his own peculiarity in order to satisfy it by means of constantly shifting partners in a process of exchange. Here the mutual recognition of the subjects, which is necessary for the realization of their specific interests, requires only the ability to appreciate the binding character of contracts and to perform the resulting actions, but here too such a recognition does not represent a separate attitude but, just as in "love," merely articulates the normative presupposition that we adopt as soon as we take part in the corresponding activity. Thus, individual

¹⁴On the development of such "interests," which are constitutive of Hegel's analysis of "civil society," see the classic study of Albert O. Hirschmann, *Leidenschaften und Interessen: Politische Begründungen des Kapitalismus vor seinem Sieg* (Frankfurt, 1980); *The Passions and the Interests* (Princeton 2005); mainly part 1.

self-realization and reciprocal recognition are internally intertwined in “civil society” just as they were under the precondition of emotional affection in the “family.” To realize his specific, indeed idiosyncratic, interests, a subject must recognize his fellow humans as partners who are normatively able to abide by their contractual obligations.

Hegel makes the connection to the idea of “education” as early as the sixth paragraph of his chapter about “Civil Society” (§ 187) by showing how much “hard work” in transforming his own needs the social transactions on the economic market demand from the individual subject. The transformation of natural needs into interests capable of being articulated in exchanges requires not only a capacity for sublimation, that is, for the controlled deferral of satisfaction till after the close of the transaction but also requires the articulation of one’s own specific wishes in a language that is universal enough to permit one to use it to declare an interest to the other that the other will be able to comprehend. This kind of “education,” which “irons out particularity,” is what, according to Hegel, enables the mind to be “at home and with itself in this externality as such,” and what he regards as a process of “liberation”:

Within the subject, this liberation is the hard work of opposing mere subjectivity of conduct, of opposing the immediacy of desire as well as the subjective vanity of feeling and the arbitrariness of caprice. The fact that it is such hard work accounts for some of the disfavour which it incurs. But it is through this work of education that the subjective will attains objectivity even within itself, that objectivity in which alone it is for its part worthy and capable of being the actuality of the Idea. (§ 187, Addition)

Just as participation in family life required learning a language game marked by affect, participation in the sphere of the capitalist market requires the development of the social competencies of instrumental rationality; but in both cases it is the participation in the respective practices that makes it possible to undergo the necessary learning processes and to learn the corresponding skills.

It is common knowledge that Hegel was familiar enough with conditions in his time to see the tendencies of social disintegration rooted in this civil society; with a clear-sightedness equaled by hardly any other philosopher of his day, he recognized the dangers inherent in an uncontrolled capitalist market that regularly produced unemployment and mass poverty. It was this sense of socioeconomic realities that made him include in the chapter about “civil society” some additional assumptions that seem hardly compatible with the system of arguments developed so far. Thus, as if to combat the disintegrative tendencies of the market on its own territory, he inserts in the second sphere of ethical life a kind of ethical subsystem essentially designed to ensure, from this early stage, a greater degree of social generalization, or common good.

Under the heading “Corporation,” still within the chapter on “civil society,” Hegel creates space for a separate sphere in which the sense of the communal is produced not indirectly by exchanges, but directly by intersubjectively shared objectives. Hardly has the individual become “a son of civil society” (§ 238) and thus an emancipated, autonomous person, when he is turned into a member of a corporation in which, modeled on the medieval guilds, the specific virtues of certain occupations are exercised for a “common end” (§ 254). It seems downright naive of Hegel to expect the corporations, which already appeared somewhat antiquated in the light of day piece work and industrial labor in his own time, to impose a moral discipline on the capitalist market:

We saw earlier that, in providing for himself, the individual in civil society is also acting for others. But this unconscious necessity is not enough; only in the corporation does it become a knowing and thinking ethical life. The corporation, of course, must come under the higher supervision of the state, for it would otherwise become ossified and set in its ways, and decline into a miserable guild system. But the corporation, in and for itself, is not an enclosed guild; it is rather a means of giving the isolated trade an ethical status, and of admitting it to a circle in which it gains strength and honour. (§ 255, Addition)

In whichever way these remarks are interpreted—whether, despite all assertions to the contrary, they are seen only as a nostalgic memory of the guilds or as an anticipation of Durkheim's occupational groups—at the systematic level they raise a problem that cannot easily be solved within the *Philosophy of Right*. So far we have assumed that each sphere of ethical life was marked by a definite pattern of social practices, which in its turn was characterized by a specific blend of reciprocal recognition and self-realization; this interpretation agreed further with the idea that the ethical spheres must normatively be understood as “basic goods” whose value arises from their constitutive role in the realization of individual freedom; and finally it was suggested, following the same line, that the whole discourse about “spheres” should take a somewhat more abstract form than that given to it by Hegel himself, who was primarily thinking of legally based institutions. However, in the chapter about “civil society” this attempt at an interpretation that brings the theory up to date is nipped in the bud as soon as Hegel allocates a constitutive role in generating an ethical sphere to several differently conceived institutions; for in so doing he undermines the possibility of seeing each of these spheres as being characterized by a single pattern of interaction, so that it becomes impossible to translate them into more abstract terms. The harder Hegel tries in the section on “ethical life” to furnish the ethical spheres with normatively different, indeed conflicting, institutional structures, the fainter become his chances of equating them all with a specific ensemble of social practices. What still seemed feasible in relation to the sphere of “the family”—that is to identify “love” as the one interactive pattern that also made other forms of realization hypothetically possible—is no longer possible in view of the sphere of “civil society,” because with the arrival of the “corporation” the interactive relation of the market has been joined by an entirely different sphere of communication whose norms of recognition are of a totally independent kind.

Perhaps it would have been altogether wiser of Hegel not to have located the intermediate sphere of the “corporation” in “civil society,” but to have placed it within the organizational

remit of the state. That solution would have created difficulties, because the corporate associations are supposed to be “ethical” organizations of civil society and not, say, state institutions that include the subjects simply as citizens of the state in question; but that way he would at least have been spared the embarrassment of having to accommodate in the same sphere two completely different forms of recognition, the first linked to transactions mediated by the market and the second to value-oriented interactions. The fact that Hegel himself cannot see through the awkwardness of such an overloading of civil society is probably the crux of the problem he faces in implementing his ethical theory: although everything in it is designed to identify only one pattern of interaction guaranteeing freedom in each of the three spheres, he cannot really bring this formal intention to bear because his eye is too firmly fixed on concrete institutional constructs. One may perhaps say that in his section on “ethical life” Hegel mingles two tasks that should have been kept strictly separate. He wants to carry out a normative structural analysis of modern societies in order to identify the historically created conditions of individual freedom, but at the same time he is trying to legitimize certain organizations that have arisen organically and are anchored in the legal system by subjecting them to institutional analysis. If he had boldly ignored this second task he could easily have presented the “civil sphere” as a single sphere of recognition in which the subjects realized their respective private purposes through strategic interactions; and to the question how members of modern societies might transcend such an indirect generality and achieve a higher degree of community he could have given a separate answer within a presentation of a third sphere, which would have had to comprise different forms of “public freedom”—where the “corporation” would also have come into its own, not as a guildlike institution, but as an indication of the necessity of a publicly mediated, even democratic, division of labor, which gave the subjects a sense of the universality of their individual activities.

Naturally, Hegel is as far away from such a solution as can be imagined. He not only tries to supplement his normative

reconstruction of modernity with an attempted institutional analysis, which forces him at the same time to seek institutional means of overcoming the crises of the capitalist market; he is also very unclear about the extent to which he has to portray his third sphere of “ethical life,” the state, as a relationship of public freedom. The tendency of the entire argument of the section on “ethical life” seems unequivocally to amount to the idea that in the “state” the members of society find a sphere of interaction in which they attain self-realization by means of communal, “universal” activities: if the individual is able to realize his freedom by reciprocating love in “the family” and to fulfill his selfish interests in “civil society,” then “the state” is the sphere in which the “destiny of individuals is to lead a universal life” (§ 258). This last term, key to an understanding of the ethical meaning of the state, indicates a form of cooperative practice in which every subject can recognize in the activity of the other a contribution to common aims; the subjects achieve freedom by carrying out actions that are intertwined, by “laws and principles based on thought and hence universal,” to such an extent that their cooperation serves to realize something “universal” (§ 258).

If Hegel had thought along such lines, if he had really envisioned an emphatic concept of “public” freedom, he could easily have conceived the state as a third sphere of reciprocal recognition: what the subjects recognize about each other, if they cooperate in the manner described, is their readiness and ability to cooperate, through their own activities, in the creation of a common good. But at the point at which Hegel starts to speak about the corresponding relationship of recognition in the chapter on “the state,” a horizontal relationship has suddenly been replaced by a vertical one. In § 260 we are told that those individuals who have already passed through the moral experiential space of the family and civil society “pass over of their own accord into the interest of the universal, and . . . knowingly and willingly *recognise* [italics mine] this universal interest even as their own substantial spirit, and actively pursue it as their ultimate end.” Here the subjects do not relate to each other in a spirit of recognition in order to achieve the

universal through common activities, but the universal seems to be given as something substantial, so that the recognition acquires the sense of a confirmation from below of what is above. Of course, the interpretation of the sentence also depends on how we understand the phrase that the individuals “acknowledge it as their own substantial spirit”; this could equally be understood to mean that the sphere of the state allows the many individuals to recognize (and acknowledge) in themselves a fund of intersubjectively shared convictions and intentions forming the precondition of a cooperative pursuit of common aims.

How Hegel wavers in his treatment of the sphere of the state is seen at many points in his closing chapter. The line of a republican reading runs from his critique of the liberal “state based on necessity and on the understanding” (§ 183), through the idea of active civic duties (§ 261), to the outline of the need for constitutional patriotism (§ 268); what is beginning to emerge in these paragraphs is the idea of “public freedom,” whose substance lies in the intersubjective practice of an active engagement in political matters. However, these tendencies clash with the very different reading that can be found in Hegel’s explanations wherever he sees the citizen above all in the role of the serviceable subject; in such passages, as in § 257 and § 260, we witness the breakthrough of an authoritarian liberalism that grants the individuals all the traditional basic rights but no chance to make a political contribution to structuring their common life. Neither of these alternative interpretations provides a space for the “citizens” to get together for discussions about the nature of the “universal” purposes; of the idea of a political public, or the concept of a democratic formulation of political will, there is no sign in Hegel’s theory of the state.

Despite all his republican tendencies, Hegel did not want to interpret the sphere of the state as a political relationship constituted by the democratic formulation of a political will. As a liberal, he does make the legitimacy of the state dependent on the free approval of every single citizen (§ 262), but he does not grant them jointly the collective role of a sovereign who determines, through procedures of public consultation and opinion formation, what the aims of that state system should be.

And yet such a democratic rounding off of his theory of ethical life would have been perfectly compatible with the aims of the theory of justice he pursues in his *Philosophy of Right* as a whole. Framed by the moral order—the guarantee of freedom—that is formed jointly by the three ethical spheres seen as relations of recognition, it would have been the task of democratic will formation in the last sphere, the truly political one, to determine the institutional development of the spaces of freedom.

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